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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 177.

SY JOC LIENG, SY JOC CHAY, SY JUI NIU, AND
C. W. O'BRIEN, GUARDIAN FOR SIEN HAN, APPEL-
LANTS,

vs.

GREGORIO SY QUIA ET AL., APPELLEES.

BRIEF FOR APPELLANTS.

Statement of Facts.

On January 9, 1894, a Chinese merchant, resident of Manila, Philippine Islands, there known as Vicente Romero Sy Quia, died intestate in that city, leaving surviving him the widow, Petronila Encarnacion, his sons by marriage with her, Gregorio, Pedro, Juan; a daughter, Apolinaria, and grandchild, Generoso Mendoza, son of a deceased daughter Maria (R., 25, 26). The inscription upon his tombstone at La Loma cemetery, Manila, was as follows: "A. Evaristo.

In

D. Vicente Romero Sy Quia, native of Am Tao, in the province of Emuy, Empire of China. Died on the 9th day of January, 1894." There also appeared on it: "Ricardo. Honored in love and affection by his disconsolate wife, sons, grandsons, brothers, and nephews. Born in February, 1822" (R., 488).

On January 17, 1894, the above-named widow, children, and grandchildren, appearing before the judge of the Court of the First Instance, District of Quiapo, Manila, prayed that they might be decreed the legitimate heirs of Sy Quia, and they were so declared, "without prejudice to a third party with equal or better rights" (R., 19).

In August, 1900, the above-named heirs filed their petition, alleging that the attorneys appointed to appraise and distribute the property of Sy Quia had performed their task, and praying judicial approval in accordance with law, which was granted (R., 47-48). These proceedings show that Sy Quia and his wife Petronila brought nothing to the conjugal partnership (R., 51), and that, except 5,000 pesos inherited by the wife during her marriage (R., 51), all property left by Sy Quia was community property, amounting to 610,445.75 pesos (R., 79), the share of each spouse at the time of his death being one-half thereof. After deducting the usufructuary portion assigned to the widow, there was left for division among the heirs property of the value of 295,048.78, or 59,009.75 to each plus a profit of 22,691.12 pesos (R., 79-80).

On June 4, 1905, the plaintiffs and appellants (except Sien Han, whose mother, Sy Chua Niu, one of the plaintiffs below, died after the suit was instituted) brought an action against the defendants and Petronila Encarnacion, who died after suit was entered, setting out that they were the only surviving descendants and heirs-at-law of Sy Quia by his marriage in 1847 with a Chinese woman, Yap Puan Niu, in the village of Am Tao, Amoy, China, and praying: (a) That a discovery be obtained from the defendants be-

low of all the real and personal property left by Sy Quia; (b) that a detailed accounting be ordered; (c) that a receiver be appointed by the court to administer the whole of the estate during the action; (d) that the plaintiffs below be adjudged the sole surviving legitimate descendants and heirs-at-law of Sy Quia; (e) that it be adjudged that the defendants are without right, title, or interest to the real and personal property of Sy Quia's estate or to the rents and profits; (f) that the defendants be decreed to hold the estate and the rents and profits in trust for the benefit of plaintiffs below (R., 1).

The defendant Generoso Mendoza Sy Quia demurred (R., 8), but his demurrer was overruled (R., 20). He then filed an answer, as did the remaining defendants, denying the above-recited marriage in China, that the plaintiffs were Sy Quia's legitimate descendants, and alleged his marriage to Petronila Encarnacion in Vigan, June 9, 1853 (R., 24; see R., 10, 21). The plaintiffs to this filed an amended complaint and replication, denying the material allegations of the defendant's answer, denying the validity of the marriage at Vigan in 1853, and alleging conversion by the defendants of the property forming Sy Quia's estate on August 3, 1900, the date of the judicial order approving proceedings of distribution (R., 28).

The remaining defendants replied to the amended complaint, denying the allegations contained therein and ratifying the defenses already made (R., 29), and Generoso filed a like answer (R., 30). Petronila Encarnacion died and Pedro Sy Quia, as administrator, continued to defend the suit as her representative (R., 30).

The plaintiff Sy Jui Niu dying intestate, C. W. O'Brien was appointed special administrator and continued the prosecution on behalf of the estate (R., 32). Under order of court depositions were taken in China, some nine witnesses being examined, many of them in effect testifying that they were present at the marriage of Sy Quia and Yap Puan

Niu at Am Tao in 1847 and perfectly acquainted with them, and also establishing that there were two children of the marriage, Sy Bi Bo and Sy Bi Git, who married Ho Gim Niu and Yap Su Niu, and also establishing the relationship of the plaintiffs with them. (R., 108-306).

The depositions were also taken of a number of witnesses at Vigan, who testified to the effect that Sy Quia married Petronila Encarnacion there in June, 1853, having been baptized in 1852, and some of them alleging that he had been living, prior to such marriage and baptism, continuously at Vigan for such a length of time as precluded possibility of his marriage in China to Yap Puan Niu in 1847 and his sojourn for three or four years thereafter, as testified to by the Chinese witnesses at Am Tao (R., 312-346).

On the trial further evidence was had, the court rendering a decision on consideration of all of the testimony, finding as facts "undoubtedly established" and the law applicable thereto as follows:

"(1) That Sy Quia was born in China in 1822, a subject of the Chinese Empire.

"(2) That when at twelve years of age he came to the Philippines and was employed by his uncle until about twenty-five years of age.

"(3) That when about twenty-five years of age he returned to China and in the year 1847 was lawfully married to Yap Puan Niu under the laws and customs of China.

"(4) That he remained about four years in China and that two male children were born of that marriage, named Sy Bi Bo and Si Bi Git.

"(5) That the said Sy Bi Bo married Ho Gim Niu, and from this marriage two children were born, one male who died in infancy and the other a female named Sy Hui Niu, originally one of the plaintiffs in this case, who died, however, since its commencement, leaving Sien Han as plaintiff in her stead, represented by her guardian, C. W. O'Brien; that the plaintiff Sy Yoc Chay was adopted on the death of the male child of Sy Bi Bo in accordance with the laws and customs of China.

"(6) That Sy Bi Git married Yap Su Niu in 1871 and that their children are Sy Yoc Leng and Sy Chua Niu.

"(7) That Sy Quia returned to the Philippines about 1851, was baptized at Vigan, and married Petronila Encarnacion under the rites of the Catholic Church in 1853.

"(8) That Gregorio, Pedro, and Juan Sy Quia were born of this marriage, as were Apolinaria and Maria.

"(9) That Apolinaria died intestate and single in 1900, leaving Petronila Encarnacion, formerly defendant herein, as her sole heir.

"(10) That Maria died intestate before Sy Quia, leaving one male child, Generoso Mendoza, as her sole heir, who is one of the defendants herein.

"(11) That both Sy Quia and Petronila Encarnacion recognized the plaintiffs in error, Sy Yoc Chay and Sy Yoc Leng, as their grandchildren, and that Sy Quia recognized the other plaintiffs, Sy Chua Niu and Sy Jui Niu, as his grandchildren.

"(12) Sy Bi Bo died before Sy Quia, leaving his adopted son Sy Yoc Chay and his daughter Sy Jui Niu his sole heirs, and as such heirs to his father's estate, Sy Jui Niu having since died, leaving the child Sien Han as her sole heir, here one of the plaintiffs in error, represented by C. W. O'Brien as guardian.

"(13) That Sy Bi Git died before his father, Sy Quia, leaving as his sole heirs, and as such heirs to his father's estate, the plaintiffs herein, Sy Yoc Leng and Sy Chua Niu.

"(14) That Sy Quia's marriage in China was lawful and the issue of that marriage are legal heirs to his estate.

"(15) That the marriage between Sy Quia and Petronila Encarnacion was unlawful, but that they entered upon the life together as partners with probably equal capital, and that therefore Petronila Encarnacion was entitled to one-half of all the property of which Sy Quia died seized in the Philippine Islands.

"(16) That Sy Quia's unlawful marriage here could not deprive the children of his lawful marriage

in China of their right to his estate in the Philippines.

"(17) That the heirs to his estate, consisting of half the property of which he died seized, are the plaintiffs in error, and the defendants Gregorio Sy Quia, Pedro Sy Quia, Juan Sy Quia, Generoso Mendoza Sy Quia, and the heirs of Petronila Encarnacion as heirs of Sy Quia's daughter Apolinaria Sy Quia; and that the heirs of Petronila Encarnacion are entitled to the other half of the estate" (R., 609).

Judgment was accordingly entered declaring the plaintiffs and defendants Gregorio, Pedro, Juan, and Generoso Sy Quia and the heirs of Petronila Encarnacion as heirs of Apolinaria Sy Quia to be joint heirs to the estate of Vicente Romero Sy Quia, consisting of one half of the whole estate distributed under the judicial order heretofore mentioned, and that the heirs of Petronila Encarnacion, being the defendants herein, were entitled to the remaining half. The court further directed that the defendants disclose all property distributed to them under the judicial order above recited, and that each render an account of rents and profits received by them, and that a receiver be appointed (R., 608-614). Under this order a receiver was appointed, and in compliance with the direction for an accounting statements were filed by the defendants, showing their possessions, cash or real estate, aggregating several hundred thousand pesos (R., 387-392). To the judgment of the Court of First Instance the plaintiffs excepted on the ground generally that they should have been found to have been the sole heirs of Sy Quia and be allowed the costs in the action and an accounting for all of the profits of the property of which Sy Quia died seized, which exceptions were overruled and an appeal taken to the Supreme Court (R., 585-586). The defendants on various grounds asked for a new trial, which was overruled and exceptions noted (R., 616) and an appeal taken.

On March 19, 1910, by a majority vote, the findings of

fact of the Court of First Instance were reversed, it being found, as appears from the opinion of Mr. Justice Torres (R., 633-639), that the findings were against the preponderance of the evidence and that the marriage of Sy Quia to Yap Puan Niu had not been proven, and the plaintiffs had failed to prove their alleged relationship to Sy Quia; that, conceding the marriage of 1847 had taken place and that the plaintiffs are the legal descendants thereof, they are not entitled to any share whatever in Sy Quia's estate, because he had induced the marriage with Petronila Encarnacion by false representations as to his status and thereby had forfeited all right to what would otherwise have been his share in community property, and because of such forfeiture Petronila Encarnacion, having entered the marriage in good faith, must be deemed entitled to all the rights of the lawful wife under the Spanish law and, on his death, to all community property resulting from the marriage, and that, therefore, the defendants, the result of such marriage, were entitled to all their mother and grandmother could claim.

Mr. Justice Johnson dissented, sustaining the finding of facts made by the trial court, but differing with that court as to its conclusions of law based thereon, holding that the marriage and the relationship of the appellants to Sy Quia being proven, a subsequent unlawful marriage could not deprive his first wife and her descendants of the share in his estate to which she and they were entitled; that upon his death Yap Puan Niu, had she been then living, would have been entitled to one-half the community property, to which in turn, with its rents and profits, the appellants, claiming through her, were justly entitled (R., 689-723).

An appeal to this court was allowed (R., 725). The record contains an affidavit showing that the amount involved was in excess of \$25,000.00 (R., 725), the fact abundantly appearing, however, at many points in the record.

The appellants claim that they are the lawful descendants of the marriage of Sy Quia and Yap Puan Niu at

Am Tao, in the Province of Amoy, in 1847, and, under the Spanish laws in force in the Philippine Islands, they are entitled to the half of the community property of the marriage between Sy Quia and Petronila Encarnacion, to which Sy Quia was entitled at the time of his death, together with the rents and profits thereof.

It is the claim of the appellees that Sy Quia never married in Amoy or elsewhere before his marriage in 1853 at Vigan, and that consequently the relationship claimed by the appellants to him did not exist; that the appellees are the only lawful descendants of the Philippine marriage and as such entitled to the property assigned to them as his heirs and to its rents and profits.

Assignment of Errors.

1. The Supreme Court of the Philippine Islands erred in holding and deciding that the findings of fact of the trial judge of the Court of First Instance of the city of Manila, Philippine Islands, were contrary to the weight and preponderance of the evidence as determined by section 273 of the Code of Civil Procedure for the Philippine Islands.

2. The said court erred in finding that the only (competent) proof of the marriage of Sy Quia and Yap Puan Niu, at Am Tao, China, in 1847, was the matrimonial letters which passed between their families previous to the marriage, and that the failure to produce these letters proved that the marriage never took place.

3. The said court erred in finding that Sy Quia was single, because the ecclesiastical investigation and canonical certificate so stated.

4. The said court erred in failing to find that Sy Quia acknowledged Sy Yoc Leng and Sy Yoc Chay as his legitimate grandchildren as well as did his Philippine wife, Petronila Encarnacion.

5. The said court erred in finding that Sy Tiong Tay, a brother of Sy Quia, paid the expenses and supported Sy Yoc Leng, Sy Yoc Chay, and Yap Puan Niu, because they stopped in Manila at his house, or that the contrary might have been proven from the books of Sy Tiong Tay.
6. The court erred in finding that the silence of Yap Puan Niu during her lifetime was unnatural or suspicious.
7. The said court erred in finding and deciding that the second marriage would prejudice a prior legal wife and prior legitimate children so as to give all of the property acquired by the guilty spouse to the second wife and her children, and to disinherit the first wife and her children.
8. The court erred in deciding and concluding as follows:

"First. That it has not been duly established in this case that the Chinaman Sy Quia married in 1847 at Am Tao, Amoy, China, the woman Yap Puan Niu, or that the plaintiffs are the descendants of the said Sy Quia, for the reason that the marriage of Sy By Bo, Sy By Git, and Sy Jui Niu, respectively, the affiliation and parentage of the latter, and of Sy Chua Niu and Sian Han, and the adoption of Sy Yoc Chay have not been proven.

"Second. That even assuming that Sy Quia actually married Yap Puan Niu in 1847, and that the second marriage with Petronila Encarnacion in 1853, is, therefore, void, Sy Quia having contracted this second marriage in bad faith, by concealing the fact that his former wife was still living, his half of the property of the conjugal partnership between him and his second wife, who married him in good faith, was forfeited by operation of law in favor of his second wife, for although the law recognizes civil effects to a void marriage, it, nevertheless, deprives the party who married in bad faith of his share in the community property acquired during the ex-

istence of the marriage up to the time of its annulment.

"Third. That, as a consequence of the foregoing conclusion and under the same hypothesis, the plaintiffs, as the descendants of Sy Quia by his first marriage, have no right to claim Sy Quia's share in the conjugal property acquired during his second marriage with Petronila Encarnacion, for the reason that by the express provision of the law the half of the said conjugal property which would otherwise have belonged to the husband was transmitted to Petronila Encarnacion, together with the other half of the said property to which she was rightfully entitled under the law as the deceived wife.

"Fourth. That Vicente Romero Sy Quia, having become a regular domiciled denizen under the laws above cited, by reason of his long residence in this country for more than fifty years, and by reason of the further fact that he married a native woman, established himself in this city with a home of his own, acquired real property and engaged in business generally, most of the property left by him at the time of his death being real property, the questions raised by plaintiff's petition must be determined in accordance with the laws of the Philippines, to which Sy Quia submitted himself when he came to the Islands and secured a residence therein, and not in accordance with any other foreign or unknown law.

"Fifth. That, aside from the fact that it does not specifically appear from the record what are the Chinese laws applicable to the issues of this case, there is no proof of the existence of the Chinese laws referred to by the plaintiffs, nor is there anything to show that the books and pamphlets introduced by them in evidence contain any specific laws of the Celestial Empire."

9. The court erred in failing to find and decide, in accordance with article 10 of the Civil Code in force in the Philippine Islands, which provides that legal and testamentary successions, with regard to the order of successions, as well as to the amount of the successional rights and to the

intrinsic validity of their provisions, shall be regulated by the laws of the nation of the person whose succession is in question, whatever may be the nature of the property and the country where it may be situate; that the person in this case whose succession is in question was a subject of the Empire of China, and that under the laws of China plaintiffs are entitled to the entire estate.

10. The said court erred in failing to find and decide that each wife was entitled to one-half of the property acquired during the second marriage, and that for the purposes of distribution of said property the wives were each regarded as legitimate in law, and that the children of each marriage succeed to the interest which their respective mothers obtain from the common husband, together with the rents and profits if the second marriage was entered into in good faith on the part of the wife, and the law applicable to citizens of the Philippine Islands should be applied to the distribution of the said estate.

11. The said court erred in finding that the second wife, Petronila Encarnacion, and the persons holding under her were entitled to any of the property belonging to the estate of Vicente Romero Sy Quia.

12. The said court erred in discharging the receiver.

ARGUMENT.**I.**

1. *The Supreme Court of the Philippine Islands erred in holding and deciding that the findings of fact of the trial judge of the Court of First Instance of the city of Manila, Philippine Islands, were contrary to the weight and preponderance of the evidence as determined by section 273 of the Code of Civil Procedure for the Philippine Islands.*

2. *The said court erred in finding that the only (competent) proof of the marriage of Sy Quia and Yap Puan Niu at Am Tao, China, in 1847, was the matrimonial letters which passed between their families previous to the marriage, and that the failure to produce these letters proved that the marriage never took place.*

3. *The said court erred in finding that Sy Quia was single because the ecclesiastical investigation and canonical certificates so stated.*

4. *The said court erred in failing to find that Sy Quia acknowledged Sy Joc Lieng and Sy Joc Chay as his legitimate grandchildren, as well as did his Filipino wife, Petronila Encarnacion.*

5. *The said court erred in finding that Sy Tiong Tay, a brother of Sy Quia, paid the expenses and supported Sy Joc Lieng, Sy Joc Chay, and Yap Pua Niu, because they stopped in Manila at his house, or that the contrary might have been proven from the books of Sy Tiong Tay.*

6. *The court erred in finding that the silence of Yap Pua Niu during her lifetime was unnatural or suspicious.*

8. *The court erred in finding and concluding as follows:*

"First. That it has not been duly established in this case that the Chinaman, Sy Quia, married in 1847 at Am Tao, Amoy, China, the woman Yap Puan Niu, or that the plaintiffs are the descendants of the said Sy Quia, for the reason that the marriage of Sy By Bo, Sy Bi Guit, and Sy Jui Niu, respectively, the affiliation and parentage of the latter, and of Sy Chua Niu and Siam Ham, and the adoption of Sy Yoc Chay, have not been proven."

Under section 10 of the act of July 1, 1902, the facts when the courts below differ will be reviewed by this court when the case is properly brought here on appeal from the judgment of the Supreme Court of the Philippines (*De la Rama vs. De la Rama*, 201 U. S., 303; 50 L. Ed., 785; *Strong vs. Repide*, 213 U. S., 419; 53 L. Ed., 853); and with all the more reason where, as here, the division of opinion exists not only as between the upper and lower court, but extends to the members of the higher tribunal.

Section 1 of act 1596 of the Philippines Commission (amending section 497 of act 190 thereof) provides as follows:

"In hearings upon bills of exception in civil actions and special proceedings the Supreme Court shall not review the evidence taken in the court below, nor retry the questions of fact, except as in this section hereinafter provided; but shall determine only questions of law raised by the bill of exceptions. But the Supreme Court may review the evidence taken in the court below and, after giving due weight to the fact that the judge who tried the case saw the witnesses when they testified, affirm or reverse by a preponderance of the evidence or modify by such preponderance, the judgment there rendered as justice may require, in the following cases:

"(1) * * *

"(2) If the excepting party filed a motion in the Court of First Instance for a new trial, upon the ground that the evidence was insufficient to justify

the decision, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and make such findings upon the facts by a preponderance of the evidence, and render such final judgment as justice and equity may require * * *."

It follows that the real question for this court to consider is whether the evidence introduced by the appellants and plaintiffs in the Court of First Instance *was sufficient* to justify the findings of the judge of that court that Sy Quia was married to Yap Puan Niu in Am Tau in 1847 and that the appellants are the legal descendants of that marriage.

Such was the view taken by this court in the case of *De la Rama vs. De la Rama* (301 U. S., 303; 50 L. Ed., 765), rendered before section 497 was amended. There that section (which provided that the Supreme Court of the Philippines could review the evidence and make findings upon the facts where the ground of the motion filed by the excepting party was that "the findings of fact were plainly and manifestly against the weight of the evidence") was fully considered by the court, and it was held that the real question for the court to consider was whether the finding of the Court of First Instance was so manifestly against the weight of the evidence that the Supreme Court was justified in reversing it (301, p. 313; L. Ed., 769). After reaching the conclusion that the judgment of the Court of First Instance should not have been reversed unless the findings of that court were plainly and manifestly against the weight of the evidence (*ibid.*, 314; Law Ed., 769) the court proceeded to make a thorough review of the evidence and held that there was no such preponderance against the findings of the lower court as authorized the Supreme Court under act 497 to set aside the conclusions of that court on the ground that the findings were manifestly and plainly against the weight of the testimony (*ibid.*, p. 318; Law. Ed., 771).

In the absence of any rule to the contrary applicable to the procedure in the Philippine Islands, it would seem that what constitutes "sufficiency" of evidence within the meaning of act 1596 should be what is generally recognized as such, to wit: proof offered of such a character and volume that it might well satisfy a rational mind of the truth of the position it is introduced to maintain (*Metropolitan R. R. Co. vs. Moore*, 121 U. S., 558, 568; 30 Law Ed., 1022-1025, citing *Stewart vs. Elliot*, 2 Mackey, 307, 315); or we can assume with Mr. Justice Moreland that the power of the Supreme Court to reverse or modify under act 1596 depends on the fact that the judgment below is "against the preponderance of the evidence" (Rec., 755). Irrespective of what view is adopted—if indeed a valid distinction exists between the two—we propose to show that the evidence of the marriage of Sy Quia and Yap Puan Niu in Am Tao in 1847 and of the appellants' relationship to Sy Quia is wholly sufficient to justify the decision of the Court of First Instance, and that it necessarily follows that his decision was not "against the preponderance of the evidence" submitted.

Plaintiff's Theory of the Facts.

We have grouped together and shall discuss the above specifications of error, believing that they are all founded upon substantially identical misconceptions of fact or law. To make our position better understood, we now proceed to explain to the court the facts which we consider to have been abundantly proven and which are conclusive, in our opinion, of the rights of the several parties in this litigation.

The fact is undisputed that Sy Quia, the common ancestor of the Chinese and Filipino parties in interest, was born in the village Am Tao, Province of Amoy, China, about the year 1822.

At the age of twelve years he went to the Philippine Islands and remained there until he became about twenty-

five years old. The fact that he passed these years of childhood and early manhood in the Philippines is established likewise by testimony of witnesses for both parties (Sy Peng, R., 127; Remigio Tongson, R., 313).

Sy Quia was then summoned by his parents to return to China to marry. He did so, and after the services of a go-between had been engaged, and the necessary inquiries and other formalities indulged in, his marriage was, about the year 1847, duly celebrated with a Chinese girl named Yap Puan Niu. This marriage is proven by the testimony of the following witnesses, who were acquainted with the parties and were present or took part in the preliminaries or the ceremonies: Sy Peng (R., 129), Lim Chio (R., 186), Yap Sy Tan (R., 200-201), Yap Chia (R. 214-215), Sy Kai Tit (R., 231), Sy Boan (R., 260-261).

For three or four years after the marriage Sy Quia remained in China, having, as the result of the marriage, two children—Sy By Bo, whose birth is sworn to by the following witnesses: Sy Peng (R., 131, 143), Lim Chio (R., 195), Yap Sy Tan (R., 202), Yap Chia (R., 217), Sy Kai Tit (R., 231), Yap Chong (R., 249), Sy Kong Leng (R., 276), Sy Jong Oan (R., 295), Sy Boan (R., 262), Lim Pan Ling (R., 403), Sy Qui Quion (R., 446), Sy Siang (R., 462), and Sy Hien (R., 435); and Sy By Git. The fact of Sy By Git's relationship to Sy Quia is likewise sworn to by all these witnesses. Sy Quia then went again to the Philippines, and, when the younger child was about two years old and the older child just beginning to walk, revisited Am Tao for a few days, returning promptly to the Philippines (R., 130). A second visit was made after the death of his parents, when he remained perhaps a year in China. It is interesting at this point to note that while at the time of his first return Sy Peng, a witness for the plaintiff, says he was acting as supercargo on his uncle's vessel (R., 130), Estefania Crisologo, a witness for defendants, referring to about the same period of time (R., 322), says he was an agent for his uncle, José Gloria Lecaros, thus giving an in-

teresting sidelight on the real facts of the case. The last visit is shown with especial clearness by the testimony for both parties (R., 193, 243, 270, 541, 547.) Meanwhile the two children of Sy Quia grew to manhood and Sy By Bo was, about 1870, married to Ho Him Niu (Sy Peng, R., 131; Sy Boan, R., 263; Sy Siang, R., 463; Yap Chia, R., 218; Sy Kong Leng, R., 280; Sy Kai Tit, R., 233; Sy Jong Oan, R., 295; Yap Chong, R., 250; Lim Pan Ling, R., 403, who actually witnessed the marriage; Sy Qui Quion, R., 447, and Sy Hien, R., 435), two children resulting from the marriage, one dying in infancy and another child being immediately adopted, named Sy Yoc Chay (Sy Peng, R., 132; Sy Sieng, R., 463; Lim Pan Ling, R., 404; Lim Chio, R., 190, 194, 196; Yap Sy Tan, R., 203; Yap Chia, R., 218, 226; Sy Kai Tit, R., 234; Sy Boan, R., 263; Sy Kong Leng, R., 281; Sy Jong Oan, R., 296; Sy Qui Quion, R., 448; Sy Yoc Lieng, R., 485; Sy Yoc Chay, R., 474, and Sy Hien, R., 436), one of the plaintiffs in this suit; the other child, a female, named Sy Jui Niu (Yap Sy Tan, R., 203; Yap Chia, R., 218; Sy Kong Leng, R., 281; Yap Chong, R., 251; Sy Kai Tit, R., 234; Sy Jong Oan, R., 296; Sy Boan, R., 263; Lim Pan Ling, R., 404; Sy Yoc Chay, R., 474; Sy Yoc Leng, R., 486; Sy Hien, R., 425; Sy Qui Quion, R., 448; Sy Siang, R., 463), one of the original plaintiffs, dying later and her only child and heir, Sian Han, being represented herein by his guardian. The testimony of the following witnesses shows the relationship of Sian Han to Sy Quia: Yap Sy Tan (R., 204), Sy Kai Tit (R., 235), Lim Pan Ling (R., 405), Yap Chong (R., 251), Sy Boan (R., 264), Sy Kong Leng (R., 282), Sy Long Oan (R., 296), Sy Siang (R., 463), Sy Yoc Chay (R., 474), Sy Yoc Leng (R., 486) and Sy Hien (R., 436). The other child of Sy Quia—Sy By Git—was married in China about 1871 to Yap Su Niu (Sy Peng, R., 144; Yap Sy Tan, R., 204; Yap Chia, R., 220; Sy Kai Tit, R., 236; Yap Chong, R., 252; Sy Kong Leng, R., 282; Sy Jong Oan,

R., 297; Lim Pan Ling, R., 406; Sy Slang, R., 464; Sy Yoe Chay, R., 475; Sy Yoe Leng, R., 484; Sy Qui Quilon, R., 449, and Sy Hien, R., 435), and there were born of this marriage Sy Yoe Leng, a male (Sy Peng, R., 144; Sy Kai Tit, R., 238; Yap Chong, R., 252; Lim Pan Ling, R., 407; Sy Yoe Leng, R., 483; Sy Slang, R., 465; Lim Chio, R., 191; Yap Chia, R., 220, 227; Yap Sy Tan, R., 204; Sy Boan, R., 265; Sy Qui Quilon, R., 449; Sy Kong Leng, R., 283; Sy Jong Oan, R., 297; Sy Yoe Chay, R., 475, and Sy Hien, R., 436), and Sy Chua Niu, a female. This fact is sworn to by the following witnesses: Sy Kai Tit (R., 238), Yap Chong (R., 252), Sy Boan (R., 266), Yap Sy Tan (R., 204), Sy Kong Leng (R., 283), Sy Jong Oan (R., 297), Lim Pan Ling (R., 407), Sy Slang (R., 465), Sy Yoe Chay (R., 475), and Sy Hien (R., 436).

After the return of Sy Quia to the Philippine Islands he took up his home in Vigan. At that time he appears to have been without particular property, being employed apparently as a traveling salesman and earning 200 pesos a year. In the year 1852 he was baptized into the Catholic church, and in June, 1853 (R., 14), he married Petronila Encarnacion. Shortly after the marriage he removed to Manila. By his second wife he had five children—Apolinaria, Maria, Gregorio, Pedro, and Juan. Apolinaria died without issue and Maria died leaving as her only child Generoso Mendosa, the descendants of Petronila Encarnacion being the defendants in this suit.

Sy Quia himself died in 1894, his first wife predeceasing him by about three years. He was buried at La Loma cemetery, Manila, next to his brother, Sy Ty (R., 400), and the inscription on the headstone, speaking of his "sobrinos" (nephews), referred to the children of Sy Ty (R., 540), and was apparently placed there by his Filipino family.

During the lifetime of her husband Yap Puan Niu visited Manila on at least two occasions, on the first occasion staying five months and the second time three or four months

(R., 465). On the second visit she was accompanied by her grandchild, Sy Yoc Leng, who at that time was about thirteen years of age (R., 465, 486, and 407). On this trip the wife of Lim Pan Ling accompanied her and her grandchild (R., 407). While in Manila Yap Puan Niu lived at the house of Sy Ty, who was a brother of Sy Quia. Sy Quia, in turn, frequently visited his wife (R., 407, 408, 450, 466, 491, 559), and when the time came for her return to China accompanied her to the boat and supplied her with money and other necessities (R., 559, 560). Meanwhile, the grandchildren were, one at the age of twenty years and the other at the age of fourteen years, taken care of in the house of their granduncle, Sy Ty, at the expense of their grandfather, and all school expenses paid by him (R., 486, 428-29, 426).

At the funeral of Sy Quia the two Chinese grandchildren were present, one of them, as he testifies, holding the head of his grandfather when he was placed in the coffin (R., 495). Afterward, on several occasions, Petronila Encarnacion, the Filipino widow of Sy Quia, gave sums of money, individual payments amounting to as much as 6,000 pesos (R., 551), to the grandchildren, the proof of one of the payments (4,000 pesos) appearing on the books of Sy Ty, the brother of Sy Quia, and being, by direction of the widow, charged against her account (R., 551, 555, 556, 557).

As indicated, many of the foregoing facts are made to appear as clearly by the testimony of the defendants as by that of the plaintiffs. For instance, Ana Quang Su, one of the wives of Sy Ty, knew of the presence of Yap Puan Niu at the time stated, although she undertook to deny that the cost of her maintenance and that of the grandsons was borne by Sy Quia (R., 533). The relationship of Sy Ty to Sy Quia, as brother, was apparently universally recognized. The fact that another brother, Sy Tiap, was lost in a storm off the Philippines was equally testified to by both sides. The last trip made by Sy Quia to China, occurring somewhere about 1864 to 1867, was testified to on both

sides by the witnesses living in Manila, as well as by several of the Chinese witnesses who were present at the Chinese marriage of Sy Quia in 1847 (R., 547). The presence of his two Chinese grandchildren at the time of the funeral of Sy Quia was also proven by plaintiffs and defendants. The presence of Yap Puan Niu, the Chinese wife of Sy Quia, in Manila, on two occasions, while accounted for by the witnesses for the plaintiff by reason of her relationship to Sy Quia, was entirely unaccounted for by any witness on behalf of the defense, although notably Ana Quong Su, one of the defense's principal witnesses, knew her and was in the same house with her on the occasion of her visits, she herself being, as stated, one of the two wives of Sy Ty, Sy Quia's brother living in the house.

In short, it may be said that the only attempt to disprove the marriage of Sy Quia in China in 1847 was the testimony furnished by the defendants, whereby it was sought to establish that for a period of years prior to 1853 Sy Quia resided continuously at Vigan in the Philippine Islands, so that it would have been impossible for him to have married in China as stated and to have had the children named by his Chinese wife. We desire, therefore, at this time to consider all the testimony in the case which it may be argued tends to show such a residence in Vigan as precluded the possibility of the Chinese marriage and the birth of the children by such marriage.

It will be borne in mind that the witnesses in China fix the age of Sy Quia, at the time of the marriage at Am Tao, at twenty-five years. In Chinese calculation this ordinarily means twenty-four years as we calculate, so that Sy Quia may have married either in 1846 or 1847. He remained thereafter at Am Tao about three or four years (R., 128, 187, 202, 216, 232, 261), showing that, according to the plaintiff's claim, he might have reached Vigan as early as 1849 and probably not later than 1850, or, in other words, three or four years before the performance of the

ceremony in Vigan and two or three years before his baptism in that city.

The first witness examined for defendants was Remigio Tongson, who was born in 1820 and first knew Sy Quia when he was about thirteen or fourteen years of age, or "little more than a child" (R., 313). He testifies that in 1847 Sy Quia was in Vigan and single. He calculates that he was seven or eight years older than Sy Quia (R., 314), although in fact, if his statements be correct, he must have been but two years older. He testifies that when Sy Quia first came to Vigan the latter was about thirty years of age. This would have put him there in about 1852. He next adds that Sy Quia was in Vigan about three or four years before he married Petronila. His next guess is (R., 315) that Sy Quia was twenty-six, twenty-seven, or up to thirty when he married Petronila, all of which points to so complete a failure of memory, coupled with a total incapacity to make the simplest calculations as to periods of time, as to make his statement that Sy Quia reached Vigan in 1847 utterly worthless, particularly when it is borne in mind that he gives no reason whatsoever for fixing the date of the arrival of Sy Quia in Vigan as 1847.

The next witness examined, Roman Gray (R., 316), only knew Sy Quia in 1851, when he requested to be baptized. He knew of the marriage with Petronila. It is somewhat significant that, *although clerk of the parish in 1850, he had no knowledge of Sy Quia until 1851.*

Estefania Crisologo, who was born about 1835, states that she knew Sy Quia about the year 1848, when he was in Vigan. Why she mentions the year 1848 does not appear in this testimony. Petronila was her husband's cousin. At that time she says he was selling clothes, which "we, the mestizas, purchased." What a girl of twelve years of age would have to do with buying clothes does not appear. The witness's statements as to the date when Sy Quia arrived, his age at the time of arrival, the length of the time

he lived in Vigan before he got married, and his age when he got married, are one and all accompanied by the qualifying clause "more or less." According to this witness Sy Quia might have arrived at Vigan anywhere between '46 and '50, might have been anywhere between 25 and 30 years of age, might have been in Vigan from 3 to 7 years before marriage, and married when 28 or 32 years old. She further states that Petronila's mother gave her 5,000 pesos when they went to Manila. But the judicial finding in this case on the settlement of the estate was that the P5,000 was inherited, this finding being apparently based upon the representations of the entire family of Petronila, herself included (R., 47, 81).

Alejandra Singson (R., 325) next testifies. This witness was born apparently in 1834, and claims to have known Sy Quia at Vigan some seven years before his marriage, or as early as 1846. He appears, at the time the witness first knew him, to have been a peddler, having no store, and the employee of Jose Gloria. In her cross-examination she places the period of Sy Quia's residence in Vigan before his marriage (R., 328) at "some five or six years," instead of seven years, as she had stated in the beginning. Although she testifies that Sy Quia was some 20 years old at the time of his arrival and that he was married "some five or six years" later, she was unable to compute his age at the time he was married, showing the prevailing inability apparent in the testimony of so many of the Vigan witnesses to make even the most elementary mathematical computations.

The next witness upon this point is Benita Encarnacion, born about 1845, who frankly tells us (R., 335) that she does not know how long Sy Quia had lived in Vigan before he married, as she was then but a child.

The next witness is Paulina Revilla (R., 338), who believes that the baptism of Sy Quia occurred in 1852, he himself being then Gobernadorcillo of San Vicente. *Although a public officer at that time, his knowledge of Sy Quia, like*

that of the parish clerk, Roman Gray, was very slight, and tends to show that Sy Quia was not in Vigan until 1850 or '51 (R., 338).

The next witness is Juana Querol (R., 340), who states that she knew Sy Quia, but does not remember when she knew him for the first time.

The next witness is Silveria Damian (R., 342). It will be noted that although the court apparently gives full faith and credit to the testimony of this witness, it has failed to perceive weaknesses in her testimony which are apparent even in the course of a cursory examination. 1st. The only date mentioned by this witness in either direct or cross-examination is the year 1848, given by her as the year in which Sy Quia came to Vigan. It is remarkable that this date should be so firmly fixed in her mind and yet that, although present at the marriage of Sy Quia, she could not give the year in which this marriage took place; nor, although she knew that Sy Quia was baptized and although it may be reasonably inferred from her testimony that at the time of such baptism he was occupying the same house with her and her husband, could she remember even approximately the year of his baptism. 2d. On being asked what year she knew Sy Quia, she gives the year 1848, when he arrived at Vigan, and in order to show how she came to know him she gives as the reason that "Sy Quia stopped at our house here when he arrived in Vigan, because my husband and Sy Quia are countrymen." In a word, she fixes the date of Sy Quia's arrival by the fact that on his arrival he came to live with her husband and herself because her husband was of the same nationality as Sy Quia. But on cross-examination she states that she was not married when Sy Quia came to Vigan, thereby completely nullifying the effect of her testimony whereby she sought to fix the date of his arrival by the fact that he then came to live with her husband and herself. 3rd. Not only is her testimony of itself contradictory, but in its essential point—the

fact that she came to know Sy Quia in 1848 because of his coming to live with her and her husband when he arrived in Vigan in that year—it cannot be reconciled with the testimony of two other witnesses, Alejandra Singson and Estefania Cristologo. The former states that she knew Sy Quia from five to seven years before he was married, and that from the time she first knew him he lived in the house of one "Lavin and Benita Encarnacion" (R., 326); the latter that she knew him first in 1848 and that he first lived in "the house of D. Paulino Lavin and later in the house now occupied by Benita Encarnacion" (R., 322). There is another feature of this woman's testimony which, in connection with a fact indubitably established by the record, shows that she is guilty of deliberate falsification at least on the following point: She states that she saw the delivery to Doña Petronila by her mother of five thousand pesos at the time of the marriage and as a marriage portion (R., 345, 344, 343). The record shows (R., 47, 51, 81) that, according to the document containing the inventory of Sy Quia's estate drawn up by Petronila's lawyers at her request and subsequently ratified by her in all its parts (R., 101), she brought absolutely nothing to the conjugal partnership. The sum of five thousand pesos is specifically mentioned in the inventory itself as having come to Petronila Encarnacion after her marriage and as an inheritance from her mother (R., 51), and as distinctly not belonging to the community property (R., 79). This fact alone shows a deliberate fabrication on the part of this witness, and of its own force suffices to render her testimony on other points unworthy of credit.

Felix Millan (R., 512) testifies that he was 69 years of age (consequently born in 1838), and therefore was fifteen years old at the time of the marriage. He knew Sy Quia and became acquainted with him because, as he states, his father used to be Sy Quia's employee. While the fact, if true, that his father was an employee of Sy Quia might

serve to show why the witness became acquainted with him, of itself it constitutes no basis for the assumption that the witness was of any particular age at that time. When asked in what year Sy Quia married (which was of course a matter of common knowledge in Vigan) he cannot give the year, but states that he was fifteen or sixteen at that time, which is true (R., 512). When asked when he first knew his relative Petronila Encarnacion and was requested to give the year "more or less," he was unable to do so, and designates that time first as the time "when the captain-general went to Vigan" and next as "when I had sense" (R., 513). When asked how long Sy Quia was in Vigan before he got married, he states that he does not remember how long, but that at that time he was already a grown boy (R., 513). He is apparently unable to compute the difference between nine and sixteen, and his attorney was obliged to do it for him (R., 513). He remembers that Sy Quia became a Christian and was baptized at San Vicente, but does not remember when (R., 514). So much of his testimony as serves for a basis for testing his recollection shows (1) that he remembers that when Petronila Encarnacion, his relative, was married he was fifteen or sixteen years old, but cannot give the year of the marriage; (2) that he cannot designate the year when he first knew this relative either by naming the year or giving his own age at that time; (3) that, although he remembers the fact and specifies the place of Sy Quia's baptism, he does not remember when it occurred, although he was a boy of thirteen at the time. He might have attempted to fix the time at which he says he first knew Sy Quia by stating that it was six or seven years before the marriage of his relative Petronila Encarnacion to Sy Quia, but, as the record shows, it was not he but his attorney who does this (R., 513). Standing alone, the statement that he came to know Sy Quia at nine because his father was his employee is not altogether convincing, still less so when it is considered in connection with his statement

that he knew Sy Quia in 1847; that is to say, at the very earliest period assigned by any of the witnesses as the date of his arrival at Vigan, at which time some of these same witnesses testify that he was an employee, receiving \$8.33 a month. It is hardly reasonable to suppose that under these circumstances Sy Quia would have been in a position to employ anybody else. If, however, the statement is true that the witness came to know Sy Quia because his father worked for him, this must have been some years after the former's arrival in Vigan and after he had progressed beyond the position of clerk at \$8.33 a month.

Aniceto Singson's testimony proceeds exactly along the same lines as that of the preceding witness. He states that he is a cousin of Petronila Encarnacion (R., 517) and that he knew Sy Quia at six or seven years of age (R., 517) and that the latter married Petronila Encarnacion when the witness was about twelve or thirteen years of age (R., 517). According to this witness he knew Sy Quia in the year 1847 or '48, and Sy Quia was married between 1853 and '55. He knew that Sy Quia did not leave Vigan between the period when he first knew him until his marriage, because Sy Quia "visited our house very often and was an intimate friend of my father." But the witness is unable to compute the difference in years between 1847 and 1854. There is absolutely no attempt to explain how the witness knows that it was exactly fifty-nine or sixty years before testifying that he first met Sy Quia.

Norberta Feril (R., 519) was born in 1830 and married in 1847. When she first knew Sy Quia she was a girl "already grown." She was also related to Petronila Encarnacion, and she states that Sy Quia married her about a year, more or less, after her own marriage. This would make him married to Petronila in 1848, contrary to the established facts of the case. She indulges in various contradictions in the testimony relative to the time when Sy Quia, with his Filipino wife, left Vigan. Her testimony is so flatly contra-

dictory of established facts, as stated, as to be entirely untrustworthy.

Macario Favila (R., 526) first heard of Sy Quia in Vigan when he was a young boy, as he states, but did not know him until he came to Manila.

The next witness was Ramon Rodriguez, who was born about 1842, and consequently eleven years old at the time of the marriage. He says that he knew Sy Quia "since he had sense," and that when he knew him in Vigan he was single. He declares (R., 527) that about four years elapsed between the first time he knew Sy Quia and the time he married, which would place his knowledge of him, if correct, in 1849, and that during those four years he did not leave Vigan. He states, however, that in 1849 Sy Quia was his father's broker, "the one who bought the indigo" (R., 529), this being in conflict with the statements of Alejandra Singson and Estefania Cristologo, who testified that he was the employee of José Gloria, and sold cloths. If the witness's statement as to Sy Quia's occupation, when he first knew him, is correct, it is clear that it must have been at a later date than the one he gives, and after his occupation as salesman had ceased.

Let us sum up the testimony of these witnesses to determine whether, altogether, they have raised even a decent doubt as to the truth of the testimony of the Chinese witnesses, that from 1846 or 1847 to 1849 or 1850 Sy Quia was in China. The testimony of several, as indicated, is to the effect that Sy Quia arrived at Vigan in 1847 or 1848, Felix Millan being the only one who states unequivocally that Sy Quia arrived when he was exactly nine years old, or in 1847. In weighing the evidence the following facts must be taken into consideration: The youngest of five witnesses on this point was sixty-six years of age, and the facts concerning which they all testified are alleged to have occurred between fifty-five and sixty years before the testimony was taken. Their establishment of dates is not based upon any

reference to any other fact occurring about 1847 or 1848, which fact was undoubted and of such a nature as to have prevented error in the minds of the witnesses. In truth, it appears as nothing more than a mere surmise. Men of sixty-six years and over, so illiterate, as the testimony shows, as not successfully to be able to tell the number of years which elapsed between the time they were six years of age and twelve or thirteen years, as is the case with some of these witnesses, are hardly to be trusted on dates. The uncertainty of their testimony, and some, at least, of its contradictions have already been made the subject of comment. We now call attention to the fact that no reason is given by any of them justifying positive statements contradictory of the testimony of the Chinese witnesses. Nothing in their testimony shows that the coming to Vigan of a Chinese employee earning less than 17 pesos a month should have impressed itself on their minds more than that of the coming of any other Chinaman in that part of the country. The date of his arrival is in no manner associated by any connecting circumstance with the date of his marriage, and his stay in Vigan after the marriage was but a short one. Even the sister of Petronila, who as Sy Quia's sister-in-law might be expected to know how long he had been in Vigan before he married, shows a total ignorance of the fact.

To sum up, we have then a situation where the fact of the marriage in China has been testified to by six witnesses who swear they were present therent, and by as many more who testify that they knew of it as of common knowledge, the testimony of all of whom stands uncontradicted and unimpeached. Is it to be discredited because some dozen witnesses offer testimony to show that fifty-nine years before the date of testifying one of the parties to the marriage was not in the place where it was said to have been performed, particularly when at least half of them have a personal interest, as relatives, in establishing the facts to which they swear and not one can assign any reason to justify their recollection; where they are all ignorant and scarcely able

to count; where the testimony of most of them is not in real conflict with the contention that the husband was in China when the marriage took place; and where the testimony of the only two witnesses who were in a position, through holding public office, to know better than the rest of the presence of Sy Quia in Vigan from 1847 to 1853, tends to show that he was absent, rather than present, during the first three years of that period? This court has already answered this question in the case of *Gaines vs. New Orleans*, 73 U. S., 642; 18 Law. Ed., 661:

"We will now proceed to consider the question of actual marriage and whether Clark in good faith contracted it. Madame Sophie Despain swears to solemnization of a marriage between Clark and Zulime by a Catholic priest, in Philadelphia, in 1802 or 1803. If this witness is to be believed, here is an end of the case, for no amount of negative testimony that Clark could not have made the marriage will weigh down the testimony of an unimpeached witness, who was present and witnessed the ceremony."

Errors of Fact Committed by the Supreme Court of the Philippines.

It must be apparent from the foregoing that there was no testimony whatsoever submitted on behalf of the defendants adequate to raise even a substantial doubt of the fact of Sy Quia's absence from the Philippines and presence in China from about 1846 or 1847 to 1849 or 1850. This was the opinion of the trial court, which had an opportunity of seeing all the witnesses brought before it, as well as to read the testimony taken at Vigan and Amoy, for the court says (R., 375):

"There is practically no conflict in the evidence received except such as possibly may be drawn from inference."

and his findings of fact are in substantial conformity with the statements we have made.

It may, then, be asked how it happened that the appellate court, upon these points of fact, reversed the court below and failed to find any persuasive evidence of the Chinese marriage. We have to say that the appellate court, as we believe, grossly erred, not alone in its conclusions from the facts actually before it, but in stating as facts things which were not substantiated by the evidence. We shall endeavor, as succinctly as may be, to make clear the errors and misunderstandings under which the court labored.

In commencing the examination of the testimony of the witnesses for the plaintiff (R., 649), the court said:

"It will be noticed that Sy Peng stated that upon the death of Sy Quia, the women of his house extended their sympathies, as customary, to his widow in China. This, however, is not true because it appears in the record as a proved fact that Yap Puan Niu died in 1891, while Sy Quia died in this city in 1894."

This statement is a half truth. Sy Peng did state that—

"At the time of his death the women folk of my house paid a visit of condolence to his wife in China, as was the custom,"

but that this was a misapprehension on the part of the witness of the question he was answering, or a misinterpretation, is evident, because immediately thereafter he states (R., 169) the fact that:

"At the time Sy ^{Quia} ~~Peng~~ died, Sy Quia's wife in China had died long ago."

And again:

"Q. Why then do you say that the women folks of your house went to pay a visit of condolence to Sy Quia's wife and children if the wife had been dead long ago?

"A. No. I did not mean that. Sy Quia's wife in China had been dead before Sy Quia died."

The court, therefore, ignores the corrected statement and takes the manifestly erroneous one for the purpose of impeaching the witness.

The court next states that:

"Lim Chio affirmed that Sy By Bo, the alleged son of Sy Quia, had two children by his wife, one of them being Sy Yoc Chay. This is not true, because Sy Yoc Chay was only an adopted son."

When we turn to the evidence (R., 190), we find that the witness stated that Sy By Bo had a boy and a girl and that the name of the boy was Sy Yoc Chay. The witness did not say that Sy Yoc Chay was born of ~~Sin Ho Chiu~~ Niu, the wife of Sy By Bo. The same question was asked of Yap Si Tan (R., 203), and she answered it in the same way, but proceeded to explain that Sy Yoc Chay was an adopted son, and a fuller explanation is contained in the testimony of Yap Chia (R., 218), who said that a son was born to ~~Yap Si Tan~~ Niu, dying an infant, and Sy Yoc Chay being adopted in his stead, while the witness, Sy Kai Tit, answering the same question with reference to this couple (R., 234), say that they had two children:

"One Sy Yoc Chay. This was an adopted boy."

See to like effect the testimony of Sy Boan (R., 263).

The court further proceeds to say that:

"The witness Yap Si Tan testified that Yap Puan Niu lost a natural child, whose name she did not remember, and in his place adopted Sy Yoc Chay as her son. This fact is not testified to by any of the other witnesses, who simply said that the adoption had been made by Sy By Bo."

This is, to say the least, a distorted reference to the testimony. On page 205 the witness is asked whether Sy Yoc Chay was a natural son of the marriage of Sy By Bo, or if he was adopted by Sy By Bo and she answered:

"Sy Yoc Chay is the adopted son. Yap Puan Niu had had a natural son, when that son died Sy Yoc Chai was adopted. Sy Yoc Chai is the son of Sy Bi Bo, and the grandson of Yap Puan Niu."

Again, on the same page, she said:

"Sy Bi Bo is the father of Sy Yoc Chay."

Once more, on page 206, being asked if Sy Yoc Chay is a natural son of Sy Bi Bo, she said:

"He is the adopted son."

Having three times over, therefore, testified to the true relationship and in conformity with the testimony given by other witnesses, we would be justified in criticizing more severely than we have the language of the court below.

The next comment made by the Supreme Court of the Philippine Islands is that:

"The witness, Yap Chia, who testified that he had been present at the wedding of Sy Quia with Yap Puan Niu, must have been eight years old at the time."

As indicative of the general carelessness with which the Supreme Court treated the record, we refer to the fact (R., 214), that the testimony having been taken in 1906, and the witness then being seventy-two years old, he was born in 1834, and at the time of the marriage must have been thirteen years of age, and not eight, and this is his testimony on that page, he saying, when asked his age at the time of the marriage:

"I was about twelve or thirteen."

The court next remarked:

"The other witness, Sy Kai Tit, who was about seventy-one years of age, and who, according to himself, was about twelve years old at the time, stated

that he had taken part in the investigation made as to the status and condition of the bride Yap Puan Niu, having assisted Sy Quia's parents and mediator in the investigation."

The witness' testimony on this point shows how thoroughly misleading the above statement is:

"I was helping there (at the negotiations) doing what job I could" (R., 240). "The part I took was to do what little I could then in the way of making inquiries" (R., 241).

The court below continues:

"Another witness by the name of Sy Boan testified that Sy Quia when he died in this city, left a surviving widow, Yap Puan Niu, who was still living in China, this being in direct contradiction of the established fact, as Yap Puan Niu died before Sy Quia."

"It is difficult to understand why the court made such a statement, for when asked (R., 268), if he was sure that Yap Puan Niu died before Sy Quia, he answered

"Yes, sure,"

and an instant afterward fixes the time between the deaths of the two at about three or four years, which, as above shown, the court below, in other connections, has considered to be correct.

The Supreme Court of the Philippines further says:

"This witness (Sy Boan), further said that when Sy Quia returned for the second time to China to attend his parent's funeral, his alleged wife, Yap Puan Niu, was still living, his testimony in this respect being in contradiction of that of the other witnesses, Lim Chio, Yap Si Tan, and Si Kai Tit."

Again the court has fallen into what we may mildly term a grievous error. While it is true that Sy Boan (R.,

270), did say, as was the fact, that when Sy Quia returned a second time to China to attend to the funeral of his parents Yap Puan Niu was still living, examination of the testimony of the witnesses named shows that no one of them testified with regard to Yap Puan Niu being living or dead at the time of Sy Quia's second return. Furthermore, it was impossible that they should have testified as the court represents them as testifying, when one considers the fact that Sy Quia's return to China was in the sixties, whereas the court itself finds that Yap Puan Niu died in 1891. Familiar as they all were with the family of Sy Quia, living in a village where his wife had always lived after marriage, it is impossible that any of them should have dreamed of giving such testimony, contradictory to the fact, as the court attributes to them.

We may waive the statement of the court that most of the witnesses above referred to

"have seriously contradicted themselves on important points in the course of their cross-examination,"

in view of the fact that the court has not been right in a single criticism, and that if there had been important contradictions, in view of the attitude it has taken, it would not have failed to call attention to them in its opinion. We may also waive the suggestion (R., 649) of any of them having told improbable stories relative to assisting in bringing about the marriage, considering that while some of them were but twelve or thirteen years of age, others were as old as Sy Quia and his wife and their associates.

Justice Torres repeatedly grounds his disbelief in the marriage in China upon the fact that the matrimonial letters, so called, were not produced in evidence. He does this although the testimony of at least one of the witnesses shows that no particular importance is attached to them and that they are permitted to be lost or destroyed without special attempt at preservation (R., 197), and to fortify its position

the court alleges that Li Ung Bing, a witness for the plaintiffs, states that the proof of marriage

"could only consist of the matrimonial letters or cards which should have been exchanged between the families of the two contracting parties."

It is interesting to note that the witness referred to makes no such statement as attributed to him. What occurred was as follows (R., 123):

"Q. The letters or contract of marriage which are exchanged by the heads of the two families have what legal significance in reference to the marriage?

"A. They contain a promise to marry or a betrothal, but bear no evidence as to whether the marriage has been consummated" (and see R., 119).

Nor is it true, as the court states, that the position supposed to be taken by the witness is corroborated by writers to whom the court refers. We have only available before us one of them, *Diccionario Enciclopédico Hispano Americano*, volume 5, second part, title China, page 1779, which contains the description of the marriage ceremonies, substantially in accord with that given by the witness above referred to, but not sustaining, either directly or by implication, the opinion of the court. We do not refer to the other authorities because the whole subject is covered by article 55 of the Civil Code in force in the Philippine Islands, which provides that—

"A marriage contracted in a foreign country, where these acts, not made subject to a regular authentic registration, may be proven by any of the methods of proof admitted in law."

Nor is it true, as stated by Justice Torres, that the evidence shows that these matrimonial letters are "duly preserved" (R., 650), or that their contents are "customarily recorded" (R., 653). On the contrary, the evidence shows distinctly that no "record" of these letters is kept (R., 112, 113).

The result of the court's holding on this point may be thus summed up: That a marriage in China cannot be proven in the absence of marriage letters which the contracting parties never had in their possession and never saw (R., 112; R., 224-225), which are not even signed by the mediator (R., 118-119), which are not recorded (R., 112-113), which do not constitute evidence of a consummated marriage (R., 119, 123), which are kept by the heads of families only for the time being (R., 124, 257), which "may be given to the children to play with (R., 197), and finally were exchanged by parties other than the parties to the marriage more than fifty-nine years ago (R., 224-225).

We cannot leave this subject without further reference to the testimony of Li Ung Bing, upon a misconception of whose statements Mr. Justice Torres, as indicated, rests in part his opinion. So far from having stated that the marriage letters were the only proof of the marriage, he said (R., 122) that the "tablet is a conclusive evidence as to the relation of the woman to the husband, there can be no mistake on that point, as the 'mourning law' is the most definite and 'particular.'" Turning, then, to page 307 of the record, we find this conclusive proof in the tablets themselves.

Bearing in mind the foregoing considerations, we may, as we think, properly object to the test of the proof of the marriage considered by Mr. Justice Torres.

THE "FALSIFICATION" OF THE TABLETS.

The record shows (p. 307) that the plaintiffs offered three ancestral tablets, or sets of tablets, to prove the marriage of Sy Quia to Yap Puan Niu and of Sy Bi Bo and Sy Bi Git to their respective wives, Ho Gim Niu and Yap Sun Niu; the tablets being taken from the family temple of Sy Yoc Leng by himself and the witness Sy Peng and brought to Amoy for the purpose (R., 149).

On pages 650 and 651 of the record the court unqualifiedly declares the tablet inscribed to Sy Quia and Yap Puan Niu

as "fraudulent" and "fabricated," because it appears from the translation made of the tablet by the interpreter Li Ung Bing that Sy Quia died in 1891, whereas he actually died in 1894 (R., 650).

What appears at first sight to constitute a vital discrepancy between the alleged contents of the tablets and the proven facts of the case is, however, easily explained—not by argument or theory, but by the tablets as transcribed, the admitted facts of the case, and by verifying the interpreter's translation of the Chinese dates by reference to the Chinese American Calendar issued by the Department of Commerce and Labor (Government Printing Office, 1904). This calendar is a comparative almanac, beginning with the year 1849 and giving day for day the official Chinese dates corresponding to the Gregorian count (pp. 9-74). It also contains a list of the Chinese "cycle" years included in each *cycle of sixty years* starting with our year of 1849, which corresponds to the cycle year of *Kei Mow*, or the official *29th Year of Do Kwong* (p. 9). The titles of the Chinese "cycle" or of the official years are not always spelled the same in the Chinese American Calendar as they are spelled by the interpreter. As appears from the testimony of the Chinese Consul General in Manila (R., 510) this is not to be expected; but the spelling is such as to show plainly which years are meant.

The tablet erected to Sy Quia and Yap Puan Niu, as reproduced in the record shows:

(1) That Sy Quia was born the "4th day, 1st moon, Kui Wie year." This year appears as the "Kwei Mei cycle year" in the Chinese American Calendar, and as corresponding to the year 1883, as applied here to the year 1822-1823; or, as the interpreter says, interpreting in 1906, "84 years ago" (R., 307).

(2) That Sy Quia died the 22d day of the eleventh month of the "Sin Bau" year. This is given in the Chinese American Calendar as the "Sun Mow" *cycle* year, or the 17th year of Kwong Sui, the 22d day of the eleventh month of which is December 22d, 1891 (Chin.-Amer. Calendar, p. 51).

(3) That Yap Puan Niu was born the twelfth day, third moon, of the "Ting Hai" year, given in the Chinese American Calendar as the "Ting Hoi" *cycle* year, corresponding to 1887, which in this case would mean 1826 to 1827, or "eighty years ago" (R., 307).

(4) That Yap Puan Niu died the third day, twelfth moon, "Kui Su" year. Reference to the list of *cycle* years in the calendar gives this cycle year as Kwai Tsz, corresponding to the year 1893, or the nineteenth year of Kwong Sui; and we learn, moreover, from the lips of the interpreter, on page 308 of the record, that the "Kui Su" year is the "nineteenth year of Kuang Hsu." Turning to page 53 of the calendar, we find that the third day of the twelfth month of of the nineteenth year of "Kwong Sui" (Kuang Hsu) is *January 9, 1894, or the exact date on which we know that Sy Quia died.*

Expressed in tabulated form the dates of birth and death of Sy Quia and Yap Puan Niu appear upon the tablet as *transcribed* as follows:

| Date of birth. | Date of death. |
|---------------------------------|----------------|
| Sy Quia: 1822 to 1823..... | 1891 |
| Yap Puan Niu: 1826 to 1827..... | Jan. 9, 1894 |

Now it is a conceded fact that Sy Quia died on the 9th day of January, 1894, as is shown by the date engraved on his tombstone at Manila and in many places in the record; and the Supreme Court finds it "a proved fact" that Yap Puan Niu died in 1891 (R., 649). This finding is fully substantiated by numerous witnesses who testified she died about 1891 (R., 136, 188, 200, 217, 232, 262, 294, 461, 476), while one witness testifies that she died at the age of 64 or 65, which in connection with the date of her birth given in the tablet shows that she must have died in 1891 (R., 224). That the tablet gives the date of her birth correctly is shown by the testimony of many additional witnesses, who, by testifying that she was about 21 when she married (in 1847),

show that she must have been born in 1826 or 1827 (R., 161, 187, 195, 201, 214, 216), while Yap Si Tan, testifying in 1906, states that she is 78, and that Yap Puan Niu was two years older than she (R., 207); again corroborating in a most convincing manner the statement of the tablet as to her birth in 1826 or 1827, or as the interpreter states, "eighty years ago" (R., 307).

To sum up: The tablet to Yap Puan Niu and Sy Quia, as *translated* by the interpreter, contains the correct dates of the birth and death of each of them; but what the Supreme Court of the Philippines accepts as the proven facts of the case, supported by the uncontradicted testimony of a dozen or more witnesses in the record, show, it seems to us, as beyond question, that in *transcribing* the vertical Chinese script to the horizontal Roman, the interpreter placed the dates of death which he had translated opposite the names of the wrong parties.

If, however, it is thought there is any room for doubt as to the correctness of our contention, it must be utterly swept away by an examination of the tablets erected to Sy Bi Bo and his wife, Ho Gim Niu, *where exactly the same mistake in transposition occurs*, but where (because the tablet gives in so many words the ages at which Sy Bi Bo and his wife died) it is more easily and as certainly detected.

Transcribed into the record and presented for the sake of clearness in tabulated form, this set of tablets as transposed announces the following facts:

| | Date of birth. | Date of death. | Age. |
|-----------------|-----------------------------------|-------------------------------------|------|
| Sy Bi Bo..... | (59 years before 1906 or 1847) | (14 years before 1906 or 1892-3) | 35 |
| Ho Gim Niu..... | (57 years before 1906 or 1849) | (25 years before 1906 or 1881-2) | 44 |

On its face the transcription is obviously absurd, for it is apparent that had Sy Bi Bo died in 1892-1893 he would have been 45 or 46, and not 35, as the transcription states in so many words; and equally apparent that had Ho Gim Niu

died in 1881-1882 she would have been 32 or 33 at the time, and would not have "died at the age of 44," as stated in the tablet, which we quote (R., 308).

If, however, we transpose the dates of death to read thus:

| | Date of birth. | Date of death. | Age. |
|-----------------|----------------|----------------|------|
| Sy Bi Bo..... | 1847 | 1881-2 | 35 |
| Ho Gim Niu..... | 1849 | 1892-3 | 44 |

the absurdity at once disappears; and, what is still more important, we find that the fact that it was Sy Bi Bo—who died about 1881-1882, is abundantly proven by a large number of uncontradicted witnesses (R., 170, 174, 218, 249, 262, 295, 447, 474, 485), and that it was Ho Gim Niu who died about 1892-1893 (R., 189, 218, 250, 256, 263, 295, 447, 463, 485).

These errors in transposition do not occur in the case of the tablets erected to the memory of Sy Bi Git and his wife, Yap Sun Niu, the dates of whose birth and death as given in the tablets is substantiated by those witnesses in the record who testify concerning these facts (R., 190, 231, 249, 446, 286, 276, 235, 406, 448, 483, 220, 252, 297, 406, 449, 484).

Turning from a consideration of the *transcriptions* of the tablets as they appear in the record to the *tablets* themselves (the presence of which in the clerk's office became known to us only after the foregoing had gone to type), we find that they confirm in a most striking manner the truth of our contention, namely, that in transcribing the vertical Chinese script to the horizontal Roman the dates of death in the case of the tablets erected to Sy Quia and Yap Puan Niu and to Sy Bi Bo and Ho Gim Niu were assigned to the wrong parties. And we find, moreover, that the tablets themselves explain why this should have occurred in the case of these two just named, and not in the case of the tablet dedicated to Sy Bi Git and his wife, Yap Sun Niu.

With the assistance of Mr. Yung Kwai, secretary of the Chinese Legation in Washington, we learn that the tablets are drawn up in the following manner, each of which we reproduce in the *form* which it presents, but in the *words*

of the interpreter, Li Ung Bing, as they appear of record (R., pp. 307, 308, 309):

Inner Tablet to Sy Quia and Yap Puan Niu (Interpreter's Translation).

| 1. | 2. | | | 3. | 4. |
|------|------|-------------|-------------|------|------|
| Died | Died | | | Born | Born |
| Time | Time | | | Time | Time |
| of | of | Deceased | Deceased | of | of |
| Hai | Su | grandmother | grandfather | Jen | Jen |
| 3rd | 22nd | Si Yap Si | Mr. Sy | 12th | 4th |
| day | day | her | Tiong | day | day |
| 12th | 11th | virgin | Quian | 3rd | 1st |
| moon | moon | name | | moon | moon |
| Kui | Sin | Puan | | Ting | Kui |
| Su | Bau | Kien | | Hai | Wie |
| Year | Year | | | Year | Year |

Reproducing the above, maintaining the *form* and substituting the Gregorian dates as given in the Chinese-American Calendar, we have the following:

| 1. | 2. | | | 3. | 4. |
|---------|----------|----------|----------|------|------|
| Died | Died | Deceased | Deceased | Born | Born |
| January | December | grand- | grand- | 1827 | 1823 |
| 9th | 22nd | mother | father | | |
| 1894 | 1891 | (etc.) | (etc.) | | |

(See Table of Cycle Years and pages 51 and 53, Chinese-American Calendar.)

As we have already shown, the Supreme Court of the Philippines has accepted as "proved facts" that Sy Quia died on January 9, 1894, and Yap Puan Niu in 1891; and the fact that he was born about 1822-1823 and she about 1826-1827 has been abundantly proven by the uncontradicted testimony of the numerous witnesses, reference to whose statements on this point has already been made (*ante*, fol. 38). It then becomes obvious that columns 1 and 4 refer to Sy Quia, and columns 2 and 3 to Yap Puan Niu. The outer or more prominent columns are devoted to the life history of the man and the inner columns to that of the woman. This fact is again made apparent by the tablet erected to Sy Bi Bo and his wife, which presents the following arrangement:

Inner Tablet Dedicated to Si Bi Bo and Ho Gim Niu (Interpreter's Translation).

| 1. | 2. | | | 3. | 4. |
|------|------|-------------|---------------------------|------|------|
| Died | Died | | Mr. | Born | Born |
| Time | Time | Mrs. | Bi (or Mi) | Time | Time |
| of | of | King | Bo | of | of |
| Yu | Su | Niu | (Babe Name) | Jen | Jen |
| 3rd | 23rd | died | died | 4th | 17th |
| day | day | at | at | day | day |
| 8th | 7th | the | the | 2nd | 7th |
| moon | moon | age | age | moon | moon |
| Jen | Kui | of | of | Kian | Bo |
| Wu | Su | forty- | thirty- | Suo | Chen |
| Year | Year | four | five | Year | Year |
| | | Grave | Geomancer's characters | | |
| | | located | | | |
| | | at | | | |
| | | Pie Ah Kien | | | |

Reproducing the above and maintaining the *form* and substituting the Gregorian dates as given in the Chinese-American Calendar gives us the following:

| 1. | 2. | | | 3. | 4. |
|-------------------------------|------------------------------|--------------------------------|---------------------------|-----------------------------|--------------|
| Died Sept. 14th 1882 | Died Sept. 3rd 1893 | Ho Gim Niu died at 44 | Bi Bo died at 35 | Born March 15 1850 | Born 1848 |

(See Table of Cycle Years and pages 42, 53, and 10 of Chinese-American Calendar.)

As shown (*ante*, fol. 39), this tablet, because it specifically gives the ages at which Sy Bi Bo and his wife died, effectually proves that columns 1 and 4 *must* refer to the person therein designated as dying at the age of thirty-five, and columns 2 and 3 to the person who "died at the age of forty-four." In the absence of anything contained in the tablet to indicate the contrary, it seems to us this result must follow as certainly as it follows that two and two make four. An examination of the original tablets will show even to one unacquainted with Chinese that the data as to the wife in both the tablets referred to, but especially in the tablet to Sy Bi Bo and his wife, appear to have been crowded in after the outer columns were inscribed and between them and the two center columns, naming the respective spouses.

Turning now to the tablet erected to Sy Bi Git and his wife, Yap Sun Niu, we find that on the "inner" tablet his name, etc., and the dates of *his* birth and death alone are inscribed, and that similar data concerning Yap Sun Niu are inscribed separately on the reverse side of the outer tablet; so that when the tablet is assembled the two inscriptions are touching each other, face to face. The fact that these inscriptions are separate instantly explains why, in this case, the interpreter made no mistake in transcribing the contents of these tablets into the record. It was because

there was no room for a mistake. These tablets furthermore indicate that in that part of China whence Sy Quia and his sons came an ordinary form of inscribing the name of an ancestor on the inner tablet is to place the name in the center, the date of birth on the right, and that of death on the left; with the necessary result that when, as in the case of the inner tablets inscribed to Sy Quia and Si Bi Bo, and their respective wives, the inscriptions to both ancestors are inserted on the same face, the same general form is followed, the data as to the husband being given the greater prominence by being placed on the margin, those of the wife following the same form, but being inserted inside the columns inscribed to the husband. That a double inscription was contemplated with regard to the first two tablets is indicated by the fact that the outer columns in each are as close to the edge as they can well be placed and be plainly decipherable, which is distinctly not the case in the inner tablet inscribed to Sy Bi Git.

The appearance of the tablets erected to Sy Bi Git and his wife is as follows:

*Inner Tablet to Sy Bi Git.**Interpreter's Translation.*

| | | |
|-------|---------------------------|------|
| Died | Mr. | Born |
| Time | Sy | Time |
| of | Bi (Mi) | of |
| 8u | Gi | Chao |
| 21st | died | 11th |
| day | at | day |
| 7th | the | 9th |
| moon | age | moon |
| Kian | of | Chi |
| Chen | thirty- | Yu |
| Year | two | Year |
| of | Grave | |
| Kuang | at | |
| Hsu | Hui | |
| | Yao | |
| | Geomancer's characters | |
| | Geomancer's Characters | |

*Inner (on Reverse of Outer) Tablet to Yap Sun Niu.**Interpreter's Translation.*

| | | |
|-------|---------------------------|---------|
| Died | Mrs. | Born |
| Time | Yap | Time |
| of | Sung | being |
| Jen | our | unknown |
| 28th | deceased | 15th |
| day | mother | day |
| 4th | died | 10th |
| moon | at | moon |
| Kia | the | Kui |
| Ching | age | Chao |
| Year | of | Year |
| of | thirty- | of |
| Kuang | two | Tao |
| Hsu | Ju Ji | Kuang |
| | King Po | |
| | San | |
| | Geomancer's characters | |
| | grave located | |

The dates being reproduced in English terms as before:

| Died | Si Bi Git | Born |
|------------------------|------------------|-----------------------|
| August 26th 1880 | died at 32 | October 26 1849 |

| Died | Yap Sun Niu | Born |
|---------------------|------------------|---------------------------|
| May 22nd 1884 | died at 32 | November 15th 1853. |

(See as to Sy Bi Git Table of Cycle years and pages 9 and 40; as to Yap Sun Niu Table of Cycle years and pages 13 and 14, Chinese-American Calendar.)

Had it not been for the stigma necessarily cast on each and every representation made by the appellants by the suggestion that the tablets were false, we should not have felt justified in going as fully as we have into the particular subject now under discussion. But to denounce the tablets as "glaringly false," and as presented only to supply proof of "the so much talked of marriage in China," was to denounce their presentation in evidence as but one step in a gigantic scheme to defraud the real heirs of their property rights and which, unrefuted, might well have served to clothe with a sinister meaning any innocent slip in oral testimony offered by the appellants, ordinarily easily explained. Aside from the intrinsic proofs of their genuineness to which we have in detail alluded, we think that, had the appellants actually contemplated the fraud which the Supreme Court of the Philippines finds (thereby intending to strengthen their oral testimony by offering in evidence false spirit tablets), it would be against all reason to suppose that they would not, at least, have had all three uniform in arrangement and presenting the same general appearance, instead of having the first two only conform in this regard, and the third (that erected to Sy Bi Git and his wife) consist of two separate inscriptions—one to the husband, the other to the wife.

In closing this subject, we may state that we have literally followed the words of translation used by the interpreter, Li Ung Bing; but that, where the only question is one of com-

puting from the Chinese year *as given by him* the corresponding Gregorian date, we have referred to the only officially recognized work on the subject of which we have any knowledge, and have accepted it as a higher authority—the Chinese-American Calendar, to which reference has been so often made in this brief. Should any doubt exist as to our correct application of a given cycle year, we may call the court's attention to the fact that the calendar gives the Chinese characters for each year, which may be compared with the corresponding characters in Defendant's "Exhibit A," but which were, *ex necessitate rei*, not reproduced in the record.

In the light of the above facts, which stand as sponsors for themselves, the charges of "falsification" so rashly made sink of their own weight, and we submit that these tablets, constituting as they do conclusive evidence of the relationship of Sy Quia and Yap Puan Niu as man and wife (R., 122), prove, in connection with the rest of the plaintiff's testimony, the fact of the marriage in 1847 beyond refutation, and establish their own authenticity.

In leaving this subject we may refer to another misconception of Mr. Justice Torres, on which he bases a second charge of "falsification" of the tablets, even more unjustifiable than the one we have just analyzed.

It is stated by the court that Li Ung Bing had shown the falsity of the tablets because in his testimony he had stated that when Chinese—

"die out of China no inscription is made at the place of their former residence in China upon such tablets of the fact of their death" (R., 651).

The court, therefore, infers that Sy Quia, having died in Manila, the tablet in question was prepared to supply the lack of documentary proof as to the Chinese marriage. It is interesting to note that the court blundered directly as to what the witness had said. After explaining that the tablets were

kept in the family temple and prepared by the descendants immediately after the death of a parent, in the presence of all relatives and friends, he was asked:

"If a person dies out of China, where is the grave record made?" (he having stated that the grave record was kept inside of the grave)

and in answer he said:

"No record is made in China at all if a man dies out of China" (R., 113).

It v. thus be seen that the witness referred to a grave record which would naturally not be kept where there was no grave, and not at all to the family tablets, which would be kept in the family temple.

THE PASSPORT.

The extreme carelessness shown by the Supreme Court of the Philippines in the examination of this case is again illustrated on page 646 of the Record, it being suggested that the plaintiffs are at fault for not having introduced "in evidence the passport required by the legislation then in force, which should and would have been then issued to Sy Quia in order to enable him to leave" the Philippines and to "return to his own" country, the legislation in question being the decree of December 20, 1849, which, as appears on its face, could not have gone into effect until over two years after Sy Quia went to China to get married.

We say nothing of the baselessness of the legal suggestion which would compel the introduction of but one kind of evidence when others might, and in this case did, equally well meet the necessities of the situation. With greater force we might reply that if the trip was not really made, then, supposing a passport would have been necessary, its non-issuance, proven by the defendants, would have destroyed the plaintiffs' case.

REGARDING THE TESTIMONY OF ANA QUANG SU.

Again, in order to impeach the testimony of several witnesses to the frequent calls made by Sy Quia upon his Chinese wife when she was in Manila, on page 652, the court refers to the testimony of Ana Quang Su, wife of Sy Ty, and says that had these taken place she would have known it, "because said Yap Puan Niu occupied a room adjoining hers in the same house." When we turn to the testimony of the witness referred to we find that she does not say that Yap Puan Niu occupied an adjoining room, but that she was "in a different room altogether, but very close to my room," and this testimony referred only to her location in the house at the time of her second trip, nothing on this point being said as to the first (R., 532).

Mr. Justice Moreland filed a concurring opinion (R., 743-756), but we get from this very little information with regard to the case, and such as we have is of less value. For instance, on page 754 of the Record, he regards it as significant that death had swept away every member of the Chinese family of Sy Quia of that generation, leaving not one to speak in this case, ignoring the fact that Sy Quia's younger brother, Si Hien, is a witness for the plaintiffs, although it is fair to add that he may only have intended to refer to the deaths of Sy Quia's children.

On page 755 is the following in Mr. Justice Moreland's opinion:

"That the testimony offered by the plaintiffs tending to show (a) that Sy Quia visited as his wife Yap Puan Niu on one or two occasions when she was in Manila living at the house of Sy Tay; that he paid her passage to and from China and gave her money and presents; and (b) that the plaintiffs Sy Joc Lieng and Sy Yoc Chay were brought here from China at the request of Sy Quia and their passage paid by him; and that they were lodged at the house of Sy Tay and educated at his (Sy Quia's) expense, is utterly destroyed by the testimony of the wife of Sy Tay,

who says, in effect, that such testimony of plaintiffs is a complete and pure fabrication."

This paragraph is interesting from different points of view. The learned justice gives greater effect to the testimony of one of the wives of Sy Ty than he does to the different items of the testimony of some five witnesses (Lim Pan Ling, R., 408; Sy Qui Quion, R., 450; Sy Siang, R., 466; Sy Yoc Leng, R., 491; Sy Hong Ki, R., 559) and declares the witness as saying in effect that what the others have said was a complete and pure fabrication. The witness said nothing of this kind, either directly or in effect, although, if she is to be believed, the other five have falsified themselves. It is more natural to conclude that she is in error, through ignorance or otherwise, than to believe that wholesale perjury has been committed, particularly when, as indicated, so much of the testimony of these and the other of plaintiffs' witnesses has been confirmed directly and inferentially by the testimony of the defendants.

THE TESTIMONY OF SY HIEN.

As a final example of the lengths to which the Supreme Court has gone in drawing hasty and unreliable conclusions of fact not at all sustained by the record, we call attention to the remarks of Justice Moreland, on page 755, concerning the appearance and testimony by Sy Hien, the brother of Sy Quia. He calls him the "main witness of the plaintiffs"—a classification wholly without foundation—accuses him of "many contradictions," not one of which is designated, and says that "his appearance on the stand during his last examination was so suspicious and unsatisfactory (he being in such a state that the court * * * ordered him from the witness stand)" as to strengthen defendant's case. A glance at page 558 shows that the witness was excused, not because his appearance was "suspicious," but because his condition was such that he was unable to give intelligible testimony. His answers were not suspicious merely because

they betokened a want of memory. We feel justified in remarking at a finding by the judge of an appellate court designating as suspicious the *appearance* of a witness on the stand whom he never saw testify, and whose appearance and actions do not, for anything that is contained in the record, seem to have aroused the suspicions of the trial court.

- SY QUIA'S STATEMENT THAT HE WAS SINGLE.

In the foregoing discussion we have touched upon practically all the points referred to in the first, second, third, fourth, fifth, sixth, and eighth assignments of error, but some minor points deserve passing comment. The court asserts rather naively, as evidence of Sy Quia's status as a single man at the time of his marriage with Petronila Encarnacion, the fact that he said he was single. Contemplating marriage, as he evidently was, and living in a country where the ecclesiastical authority would not knowingly have permitted bigamy, of course he made the statement. The suggestion that he was single because the ecclesiastical authorities so believed and certified is, as it seems to us, equally a contention not to be made in a legal tribunal, being, as it was under the circumstances, a summing up of what must be regarded as hearsay evidence. There was no adversary proceeding or judicial proceeding to determine the fact of his status, but merely an inquiry of him and of some of his associates as to whether he was single, and, his first marriage taking place a thousand miles away, the persons informing the ecclesiastical authorities of his status might well have contented themselves by accepting Sy Quia's assurances, and, in fact, with their views relative to the marriage status, would not have conceived that they were doing any wrong in the making of misstatements. Furthermore, the record discloses that Petronila Encarnacion was not at that moment in a position to be too inquisitive, and that there was occasion for the marriage without delay, her first child being born about six weeks after the ceremony (R., 347, 348).

Sy Quia's Attitude Toward His Chinese Wife and Grandchildren.

We have perhaps said enough upon the point of the recognition, by Sy Quia, of Sy Yoc Leng and Sy Yoc Chay as his grandchildren, but we will sum up briefly the circumstances in regard to this as follows: The plaintiff's witnesses show that these grandchildren came to Manila at the ages of fourteen and twenty respectively; that they went to the house of their uncle, Sy Ty (R., 440, 477, 486); that they were immediately taken and shown to their grandfather, who received them as grandchildren (R., 478, 482, 486); that he had paid their expenses to come to Manila; that he paid their schooling expenses (R., 426, 429, 439, 486, 490) and their expenses at the house of Sy Ty (R., 429, 479, 490); that he looked after their welfare in every natural respect; that they attended the funeral and performed certain offices there; that Sy Hien recognized them as grandchildren of Sy Quia.

That Sy Quia should have proclaimed the fact to the world, at Manila, would have been most inopportune, having, as he had, a Filipino wife and five children; that even their half brothers may not have known the fact was not at all strange and they may have believed that Sy Ty paid the expenses of these boys, although the evidence clearly shows that the money was furnished to Sy Ty by Sy Quia (R., 479).

Again, with regard to these children we are met with the same peculiar situation as exists with regard to Yap Puan Niu. While Yap Puan Niu's presence in Manila was perfectly well known to Ana Quang Su, witness for the defendants, she and the defendants have at no time explained or attempted to explain their presence or connected it with anybody other than Sy Quia. So with these grandchildren, although several of the defendants knew them personally from practically the time of their arrival in Manila; although Ana Quang Su knew them, the occasion for their

being in Manila, their relationship to any other person is absolutely unexplained by any of the defendants' testimony, which simply puts them in the city as boys, leaves them in the house of a man with whom the defendants are perfectly familiar, and while disputing in general terms the plaintiffs' statement as to their relationship, no explanation of any kind is offered, no attempt is made to account for their presence in a strange city and their importation when youths.

Again, it seems singular that the Supreme Court of the Philippines should have assumed that if the expenses of these boys had been paid by Sy Quia to Sy Ty the fact would have appeared on the books of Sy Ty. This is not at all a natural conclusion. That the purely business matter of buying and selling of merchandise should have its history on the business books of Sy Ty we may readily believe, but that an exclusively family matter, in the conduct of which Sy Quia relied upon the discretion and fraternal regard of his brother, should have so appeared was entirely out of the question. As well might one suppose that the father would keep upon his business books the story of the advances that he made for his sons from day to day. While it is conceivable that he might do this sort of thing, there is no presumption based upon the experience of mankind that this is done in any case. On the other hand, if Sy Yoc Chay had been a mere employee of Sy Ty the payment of wages to him by Sy Ty would have duly appeared on his books, but no attempt to prove this was ever made.

The Silence of Yap Puan Niu.

The court refers, on page 655, to the unexplained silence on the part of Sy Quia's alleged wife, Yap Puan Niu, who might have asserted whatever rights she may have had before the Philippine tribunals as the legitimate wife of Sy Quia, and states that the effect of this silence, in connection with the sworn statement made by Sy Quia before the

ecclesiastical authorities at Vigan prior to his entering into the nuptial contract with Petronila Encarnacion, together with the additional fact of his residence at Vigan in the capacity of a single man, is to "completely overcome and destroy the improvised parol evidence as to the pretended marriage of Sy Quia in China" (page 655).

While this reasoning might well be of force if applied to the case of two women, married under the circumstances of this case, both living in a country where the laws of concubinage are unknown, it has little or no application to the peculiar conditions which characterize this case. Yap Puan Niu was, according to the plaintiffs, duly betrothed to and espoused by Sy Quia under conditions which made her his lawful and only lawful wife or mistress of his establishment by the laws of China. Had the second marriage taken place in China instead of in the Philippines she would have had no cause for complaint or for belief that her place would be or could be in any way supplanted by the second so-called wife. In her opinion, and by the laws of her country, she still remained the lawful wife of Sy Quia in spite of his second marriage, and she undoubtedly retained the belief, backed up by centuries of Chinese custom and recognized usage, that her husband's connection with Petronila Encarnacion was not only justifiable, but natural, and that the latter's relation to Sy Quia was neither more nor less than what it would have been had she resided in China, namely, that of a lawfully acquired concubine. By the unimpeached testimony of many of the Chinese witnesses, Yap Puan Niu's support by her husband was in no way interfered with by the fact of his new alliance (R., 156, 427, 478), nor was that of her grandsons, Sy Yoe Lieng and Sy Yoe Chay, as she by her visits in Manila had doubtless occasion to observe when living in the house of her brother-in-law, Sy Ty. Having apparently nothing to complain of, from her own standpoint at least, in the way of neglect or outraged marriage vows, the mystery of her silence seems removed; and the fact that she did not appeal to the Philip-

pine courts for the recovery of rights the existence of which she never knew and which were not recognized by her own laws does not seem to offer just cause for wonder.

As illustrative of the Chinese point of view on the subject of marriage, we refer to the direct examination of Sy Siang (R., 461-2), wherein the witness distinguishes between the wife in the Philippines and the wife in China, giving the names of each, and also distinguishes between the Chinese and the Philippine grandchildren. The same thing happens in examination of Sy Jong Oan (R., 301).

The Nine Silk Suits.

Much is said in the opinion of the court below (R., 654) with regard to the fact that the nine silk suits which were put upon Sy Quia at the time of the funeral, and, according to Chinese custom, were to be placed upon the oldest male descendant, were put on one of the Filipino grandchildren, instead of upon one of the Chinese grandchildren, and it is said that this ceremony was conducted under the direction of Sy Hien, who would have caused the suits to be placed upon the Chinese grandchildren had Sy Hien not recognized the Filipino grandchild as the true oldest descendant. The criticism seems to us absolutely without foundation. We have to remember that Sy Quia gave as little publicity as possible, in Manila, during his lifetime, to the fact that there was a Chinese marriage, and that if Sy Hien had taken the steps suggested by the Philippine court it would have meant a family scandal on the occasion of the burial of Sy Quia and have resulted in accomplishing nothing. The presence of the Chinese grandchildren at the funeral was in itself sufficiently indicative of their relationship to the deceased, particularly remembering, as we do, that at one time or another both were present in what is described as a very small room, in which the body of Sy Quia lay.

Delay in Bringing Suit.

Mr. Justice Moreland considers that the failure on the part of the plaintiffs to assert their rights for a period of eleven years after the death of Sy Quia affords a very strong presumption against the validity of their claim (R., 764). Sy Quia appears to have died January 9, 1894, and the suit herein was filed June 4, 1905. The explanation for the delay is not difficult. From 1894 until the fall of 1898 the Philippine Islands were under the control of Spain, and the judges were either Filipinos or Spaniards. It was scarcely to be expected, knowing the conditions there prevailing, that a member of an alien race could have hoped for justice in a contest against wealthy members of a mestizo family. Following the cessation of the Spanish control was a period of several years of contest between the natives and the United States Government, when all business was unsettled. When affairs resumed orderly conditions the plaintiffs appear to have gone to their attorneys in the islands and made an arrangement for the prosecution of their claim. These attorneys, who were themselves Americans, were compelled to make long and troublesome investigations, and when these investigations were perfected as far as possible, then within a reasonable time suit was brought.

It is altogether wrong to indulge in a presumption against the plaintiffs because of a delay which under certain circumstances in the United States might have appeared excessive. The explanation for the delay lies, as it seems to us, right on the surface of things and in the political conditions prevailing.

But, after all, this is not a case for assumptions and presumptions on the part of the court. We have produced such clear evidence of the marriage in China as renders them valueless. Doubtful presumptions may not prevail against clearly proven facts.

The Five Thousand Peso Marriage Gift.

The judge of First Instance found "that when Vicente Romero Sy Quia and Petronila Encarnacion were married Sy Quia had some property, and later Petronila Encarnacion appears to have brought into the marriage contract five thousand pesos" (R., 581). Mr. Justice Torres, speaking for the majority, states that, while at the time of the marriage Sy Quia was a mere clerk with a salary of two hundred pesos a year—

"on the other hand, there is evidence in the record to the effect that Petronila Encarnacion, who belonged to a wealthy family of Vigan, brought to the marriage as a gift from her parents the sum of P5,000 which, together with their common labor and industry, was the basis of the fortune accumulated by both husband and wife in the course of years" (R., 656).

Mr. Justice Moreland, concurring, speaks as follows:

"In this case the Filipino wife, Petronila Encarnacion, was the financier of the family. She was the one who brought to the marriage the capital which was the corner-stone of the subsequent business structure. She was born of a business family who had accumulated wealth. On her marriage with Sy Quia she received a portion of that accumulation" (R., 743).

What significance was attributed to the alleged bringing of this marriage portion by Petronila Encarnacion, except that it tends to establish the existence of an equity in the descendants of the Filipino wife, does not appear. It suffices to say that both courts erred in finding that Petronila brought five thousand pesos or any part of it to the marriage contract, a fact which is established beyond all doubt by this record, by the assertion of her own attorneys employed in distributing the property left by Sy Quia (R., 51), and supported by her ratification of their report and inventory (R., 101).

In concluding this discussion of the foregoing assignments of error, we submit that the testimony offered by the plaintiffs in error and appellants in this case is not impeached in one single particular by the evidence in rebuttal offered by the defendants in error and appellees; that the various contentions made, both in the majority and concurring opinions, alleging the existence of inherent weakness and improbability in that testimony, finds no justification either in reason or in the record, and that finally the Supreme Court erred in rendering its decision reversing the finding of fact made by the judge of the Court of First Instance, inasmuch as its power to do so is limited to cases where the finding of the court below is "against the preponderance of the evidence" (Mr. Justice Moreland (R., 755), Mr. Justice Johnson (R., 672), section one, act 1596, Philippine Commission), which is not the case here.

II.

7. *The court erred in finding and deciding that the second marriage would prejudice a prior legal wife and prior legitimate children so as to give all of the property acquired by the guilty spouse to the second wife and her children and to disinherit the first wife and her children.*

8. *The court erred in finding and concluding as follows: "Second. That, even assuming that Sy Quia actually married Yap Puan Niu in 1847, and that the second marriage with Petronila Encarnacion in 1853 is therefore void, Sy Quia having contracted this second marriage in bad faith by concealing the fact that his former wife was still living, his half of the property of the conjugal partnership between him and his second wife, who married him in good faith, was forfeited by operation of law in favor of his said second wife, for although the law recognizes civil effects to a void marriage, it nevertheless deprives the party who married in bad faith of his share in the community property acquired dur-*

ing the existence of the marriage up to the time of its annulment.

"Third. That, as a consequence of the foregoing conclusion and under the same hypothesis, the plaintiffs, as the descendants of Sy Quia by his first marriage, have no right to claim Sy Quia's share in the conjugal property acquired during his second marriage with Petronila Encarnacion, for the reason that, by the express provision of the law, the half of the said conjugal property which would have otherwise belonged to the husband was transmitted to Petronila Encarnacion, together with the other half of the said property to which she was rightfully entitled under the law as the deceived wife.

"Fourth. That Vicente Romero Sy Quia, having become a regular domiciled denizen under the laws above cited by reason of his long residence in this country for more than fifty years, and by reason of the further fact that he married a native woman, established himself in this city with a home of his own, acquired real property, and engaged in business generally, most of the property left by him at the time of his death being real property, the questions raised by the plaintiffs' petition must be determined in accordance with the laws of the Philippines, to which Sy Quia submitted himself when he came to the islands and secured a residence therein, and not in accordance with any other foreign or unknown law.

"Fifth. That, aside from the fact that it does not specifically appear from the record what are the Chinese laws applicable to the issues of this case, there is no proof of the existence of the Chinese laws referred to by the plaintiffs, nor is there anything to show that the books or pamphlets introduced by them in evidence contain any specific laws of the Celestial Empire."

9. The court erred in failing to find and decide, in accordance with article 10 of the Civil Code in force in the Philippine Islands, which provides that legal and testamentary successions, with regard to the order of succession, as well as

to the amount of the successional rights and to the intrinsic validity of their provisions, shall be regulated by the laws of the nation of the person whose succession is in question, whatever may be the nature of the property and the country where it may be situate, that the person in this case whose succession is in question was a subject of the Empire of China, and that under the laws of China plaintiffs are entitled to the entire estate.

The Appellants Are Entitled to Sy Quia's Half of the Community Property.

According to the opinion of Judge Johnson in the Supreme Court, the plaintiffs, being the descendants of the valid marriage in China, are entitled to one-half of the community property existing at the time of the death of Sy Quia, and which would go to his heirs upon the termination of his attempted conjugal partnership with Petronila Encarnacion. This, we maintain, is the true view of the situation, unless a view more favorable to the plaintiffs be taken, under which they would be entitled to the entire property left by Sy Quia.

The argument may be briefly stated: Sy Quia was validly married in China, and this marriage was never set aside by any judicial proceedings. His only legitimate heirs, therefore, by the laws equally of China and of the Philippines, were the children of that marriage, his wife in China predeceasing him. This right of his legitimate heirs has not been and could not have been taken away from them by Sy Quia, except by some conveyance or will made by him during his lifetime. No such will or conveyance was made.

It is argued, with small measure even of plausibility, by the Supreme Court of the Philippine Islands that Sy Quia's rights in his own property, and therefore the rights of his legitimate heirs, were forfeited by reason of his bigamous marriage, and that his property, therefore, by that fact itself, became the property of Petronila Encarnacion and

her children. To support this most extraordinary theory, there is cited, to begin with, law 16, title 17 of the 7th Partida, which, after denouncing bigamous marriages, proceeds as follows:

"Notorious wickedness is committed by men who knowingly marry twice while their first wife is living, and the same may be said of women who marry twice, knowing that their first husband is still alive. We therefore command that every one who should knowingly enter into such a marriage in any of the manners specified in this law be hence banished to some island for five years, and that he forfeit whatever he may own in the place at which the marriage was performed, and that it be given to his children and grandchildren, if he has any, and if he has no children or grandchildren, one-half of such property should go to the person deceived and the other half to the King's Chamber; and if both parties knew that one of them was married, and willfully married him or her, then both shall be banished, each to a separate island, and the property of either of them who may have no children should go to the King's Chamber" (R., 658).

This law makes the following perfectly clear: First, that if, as in this case, a man already married induces another woman to marry him, the result of his unlawful act, both as to the penalty of banishment and as to the deprivation of property, is to be suffered by him alone, for the law specifically provides that if he has no children or grandchildren one-half of the property shall go to the wife, the other half to be forfeited to the Crown. It is obvious that the law did not intend to have either children or grandchildren deprived of their property rights because of the misdeed of the father or grandfather.

Second. It is further perfectly plain that the term "children or grandchildren" is not limited to the children or grandchildren of the unlawful marriage. This is shown by the provision that if both parties knowingly contracted the

unlawful marriage "*the property of either of them who may have no children*" shall be forfeited to the Crown. The law thus refers in unmistakable terms to the continuing existence of property rights in the children by both sets of descendants, those of the lawful marriage and those of the unlawful marriage, and contains no provision whatsoever which can be cited to sustain the proposition that the amount forfeited by the guilty spouse is to go to the spouse who married in good faith.

The court cites in support of this contention article 1417 of the Civil Code, which provides as follows:

"The conjugal partnership expires on the dissolution of the marriage or when it is declared void.

"The spouse who, by reason of his or her bad faith, caused the annulment, shall not receive any share of the property of the partnership."

It seems plain, however, that this article has no application whatsoever to the case at bar because it presupposes—

(a) That the marriage has been *declared null*.

(b) That the husband caused the annulment by his bad faith.

This article constitutes section 6 of book 4, title 3, chapter 5, of the Code, and is entitled "Concerning the dissolution of the conjugal partnership." It deals solely with the question of such dissolution, and gives as the causes of dissolution (1) the dissolution of the marriage, (2) the annulment of the marriage.

Article 52 provides that "a marriage is dissolved by the death of one of the spouses." Death and annulment constitute the only methods of terminating a marriage under the Civil Code. The only reason assigned in article 1417 for the forfeiture of one-half of the community property is not, as would seem to be understood by Mr. Justice Torres, the contracting of an unlawful marriage in bad faith by one of the spouses, but its actual annulment as the result of the judicial decree of annulment, which brings about, *ipso facto*,

the termination of the marriage contract and renders necessary the distribution of the partnership assets. It is perfectly plain that the marriage partnership does not come to an end except in the case of death or until "it is declared null," and it is perfectly plain that the actual annulment of the marriage, of which the spouse acting in bad faith is the cause, must take place before the provisions of this article can apply. This is necessarily so, because a marriage performed with all the solemnities of law is to be considered as valid and binding until shown to be otherwise by a judicial decree to that effect. As Manresa says (Commentaries on the Civil Code of Spain, vol. I, p. 342):

"In public opinion, in the relations brought into being by the social compact, in daily communication with friends and relatives, a marriage has always existed until the judicial decree has been made known (almost always by its effects) declaring it to be a nullity" (342).

The fact that it might be shown, as here, after the termination of the marriage contract by death, that one of the spouses had entered into that contract in bad faith cannot have the effect of rendering the provisions of this article applicable, for the applicability of the paragraph relied on by Justice Torres looks to the distribution of the partnership property on the dissolution of the conjugal partnership, which has resulted from the issuance of a judicial order declaring its annulment.

Says Scaevola in his Commentaries on the Civil Code (vol. 23, p. 374):

"Now, then, when does the marriage partnership cease to exist by virtue of the nullity of the marriage? On the one hand, article 68 of the Code does not include its termination among the provisional measures to which the presentment and allowance of petitions of annulment gives rise. On the other hand, the termination of legal partnership cannot in law be considered to have taken place until the question

regarding the nullity of the marriage is finally decided. And this is without doubt what article 1417 seeks to express, in providing that the community partnership expires on the dissolution of the marriage, or when it is declared null. 'When it is declared null'—that is, when the annulment is declared."

It was death, not the annulment of the marriage, which in the case at bar put an end to the marriage contract of Sy Quia and Petronila Encarnacion. The marriage having been performed with the requisite solemnities, and its validity under the Spanish law having never been questioned in the lifetime of Sy Quia, and no action for its annulment having been brought during his lifetime, its civil effects must be deemed to have operated with regard to both spouses. Therefore, when Sy Quia died he was entitled to his share in the community property; irrespective of the circumstances under which the marriage was entered into since, as Scaevola and Manresa point out, no question of the nullity of the marriage could arise in law until its annulment was actually decreed.

It is perfectly plain, therefore, that article 1417, construed either alone or in connection with articles 67, 68, 69, 70, 71, and 72 (contained in section 5, book 1, title 4, of the Code, entitled "Of the effects of the annulment of marriage and those of divorce"), has no application whatsoever to conditions presented by the case at bar, namely, where there are two innocent wives married to one and the same man.

We apologize to the court for having given such serious consideration to the refutation of a proposition as extraordinary as that which is contended for by the Supreme Court of the Philippines on this point, and merely state that our reason for so doing was the tone of finality adopted by Justice Torres in claiming the applicability of article 1417 to the case at bar. That his position is wholly unfounded is made apparent by the only authoritative expression of Spanish commentators on the exact point we have been able

to find, as well as numerous adjudications to the same effect, based on the same state of facts, rendered by courts in this country in decisions based upon the Spanish law applicable to cases such as this.

Paz, in his 61st Consulta, class 9, states the law as follows in a case identically the same as the present:

"Out of the acquets and gains the debts must be paid because what the parties own during the marriage cannot form a part of the acquets and gains, and belongs to the creditors. THE BALANCE, AFTER PAYING THE DEBTS, MUST BE DIVIDED BETWEEN THE TWO WIVES, WITHOUT ANY PORTION OF IT GOING TO THE SUCCESSION OF THE HUSBAND. The reason of this is that by the laws of this realm, ONE-HALF OF THE ACQUETS AND GAINS BELONGS TO THE FIRST WIFE, although they have been made by the husband. Lib. 5, Nueve Recopilacion, tit. 9, 1, 1-6. And although the second law of this title requires the cohabitation of the wife with the husband, in order that she be entitled to her share, yet as the marital cohabitation has not failed through her fault, but, on the contrary, through the fault of her husband, who abandoned her, she is not to lose her rights on account of the fault and misconduct of her husband. *Imputari no debet ei per quem not stat, non faciat quod per eum fuerat faciendum.* De Reg. Jur. 6, reg. 41.

"TO THE SECOND WIFE THE OTHER HALF IS DUE, because by virtue of her good faith at the time of her marriage, she is reputed a lawful wife, for the same reason for which the law recognizes her issue as legitimate. This is affirmed by Covarruvias in Epit. p. 2, cap. 7, sect. 1, no. 7; Antonio Gomez, l. 50 de Toro, no. 77, and Molina de Just. tract. 2 disp. 433; who all agree that it is the common opinion of the doctors of the law that a woman, marrying in good faith, although the marriage may be null, is entitled to one-half of the acquets and gains. FROM WHICH IT RESULTS THAT ONE-HALF GOES TO EACH OF THE WIVES, AND THAT THE HUSBAND DECEIVING THE SECOND AND DOING A GRIEVOUS WRONG TO THE FIRST, REFUSES UNJUSTLY TO EITHER THE SHARE WHICH BELONGS TO HER: AND THAT HE IS BOUND TO SATISFY BOTH OUT

OF EVERYTHING HE POSSESSES, BECAUSE THE LAW FAVORS THOSE WHO ARE DECEIVED AGAINST THOSE WHO DECEIVE THEM. *Cum deceptis et non decientibus jura subveniunt.* IN TAKING FROM THE FATHER'S SUCCESSION THOSE ACQUETS AND GAINS, NO WRONG IS DONE TO THE INHERITANCE OR THE LEGITIMATE PORTION OF HIS CHILDREN, BECAUSE THIS IS A JUST DEBT WHICH HE OWES TO HIS TWO WIVES, AND THE THING WHICH THE FATHER OWES IS NOT INHERITED BY HIS CHILDREN, BUT TAKEN BY HIS CREDITORS, AS THEIR OWN."—Paz, *Consultas Varias*, pp. 483-4.

(Cited in *Patton vs. Philadelphia*, 1 La. An., 98.)

To the same effect are:

Clendenning vs. Clendenning, 7 Martin's Rep. (La.), 587.

Lee vs. Smith, 18 Tex., 142 (1856).

In the Succession of Navarro, 24 La. An., 298 (1872).

Harrington vs. Barfield, 30 La. An., 1297 (1878).

In the Succession of Taylor, 39 La. An., 823 (1827).

Barkley vs. Dunke, 99 Tex., 150-153.

Lawson vs. Lawson, 30 Tex. Civ. App., 43.

Allen vs. Allen, 105 S. W., 54.

Railway Co. vs. Robertson, 121 S. W., 202.

Chapman vs. Chapman, 16 Tex. Civ. App., 383.

Routh vs. Routh, 57 Tex., 589.

Hubbell vs. Inkstein, 7 La. Ann., 252.

Morgan vs. Morgan, 1 Tex. Civ. App., 315.

Abston vs. Abston, 15 La. Ann., 137.

Smith vs. Smith, 45 La. Ann., 1140.

Jerman vs. Tenneas, 44 La. Ann., 620.

In addition to the foregoing cases cited above and relied upon by Justice Johnson in his dissenting opinion, we beg to invite the court's attention to the well-considered cases of *Johnson vs. Johnson's Administrator*, 30 Mo. St., 72, and of *Connolly vs. Woolrich*, 11 Low. Can. Jur., 197. The

latter case presents features startlingly similar to the case under consideration. In that case the question up for discussion was the validity of the marriage of a native of Lower Canada to a Cree woman, this marriage having been celebrated in accordance with the rites and ceremonies of the tribe of the woman, and having been followed by cohabitation and offspring. These rites and ceremonies and the customs of the tribe admitted of polygamy and voluntary divorce. The husband took his Indian wife to Lower Canada after a number of years of cohabitation with her, and there cast her off and married a Canadian woman. The question came up between the offspring of the two marriages as to their rights in the estate of their deceased father. The doctrine adopted by this court was that adopted by the Louisiana courts and by this court in the cases above cited. We do not believe that there is a court in this country which has or would visit upon the legitimate first wife and her legitimate children a penalty prescribed against the sinning husband for his bigamous act.

III.

10. *The said court erred in failing to find and decide that each wife was entitled to one-half of the property acquired during the second marriage, and that for the purposes of distribution of said property the wives were each regarded as legitimate in law, and that the children of each marriage succeed to the interest which their respective mothers obtain from the common husband, together with the rents and profits, if the second marriage was entered into in good faith on the part of the wife, and if the law applicable to citizens of the Philippine Islands should be applied to the distribution of the said estate.*

It is undoubtedly true that the laws of the Philippine Islands do not affirmatively cover such a situation as exists

in this case, and yet we are not without some guide as to the determination of the question before the court. The children resultant upon a bigamous marriage, where one of the spouses believes himself or herself validly married, are legitimate. In this case Petronila Encarnacion, so far as the record is concerned, believed she was validly married. There did exist what we may consider to have been a conjugal partnership. Although there was no right of inheritance in these children from Sy Quia, it may be argued that there was a right of inheritance in the results of the partnership, so far as the share of Petronila Encarnacion was concerned. In other words, her children might be regarded as justly entitled to receive one-half of the property belonging to the partnership at the time of Sy Quia's death, plus the sum of five thousand pesos inherited by her during the existence of the partnership. The rest of the community property belonged to Sy Quia, and had he outlived Petronila he would have had it, and it would have gone to his legitimate heirs. Not outliving her, but being his property nevertheless, it goes to his legitimate heirs, who are the plaintiffs in this case.

IV.

11. *The said court erred in finding that the second wife, Petronila Encarnacion, and the persons holding under her, were entitled to any of the property belonging to the estate of Vicente Romero Sy Quia.*

12. *The said court erred in discharging the receiver.*

We have stated at sufficient length already our position with regard to the descent of what may, for convenience, be termed the community property of Sy Quia and Petronila Encarnacion, and we are, therefore, relieved from a further discussion of the eleventh assignment of error.

If, as we believe, we are entirely correct in the positions we have taken relative to the facts of this case and the law

applicable thereto, it would follow that the twelfth assignment of error must be sustained, the discharge of the receiver being a consequence of the other errors indulged in by the Supreme Court of the Philippine Islands.

V.

Conclusion.

In concluding we respectfully allege:

1. That the facts as found by the Court of First Instance of Manila were not against the preponderance of the evidence, but, on the contrary, the evidence was wholly sufficient to justify its findings.

2. That the appellants are entitled to one full half of the community property existing on the dissolution by death of the marriage of Sy Quia and Petronila Encarnacion, together with the rents, profits and interest thereon.

We, therefore, request that the decision of the Supreme Court of the Philippines be reversed.

Respectfully submitted,

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[20010]

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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 177.

SY JOC LIENG, SY JOC CHAY, SY JUI NIU, AND C. W.
O'BRIEN, AS GUARDIAN FOR SIEN HAN, APPELLANTS
AND PLAINTIFFS IN ERROR,

VS.

GREGORIO SY QUIA ET AL.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF
THE PHILIPPINE ISLANDS.

**BRIEF FOR DEFENDANTS IN ERROR AND
APPELLEES.**

Statement.

This case has been brought here from the Supreme Court of the Philippine Islands both by appeal and by writ of error. It seeks to review a judgment of the Philippine Supreme Court holding the appellees to be the legal heirs of

one Sy Quia, a Chinaman who died in Manila in 1894, leaving an estate valued at about a half million dollars, American money, which estate has been in possession of the appellees, as the heirs at law of the deceased, ever since his death in the year 1894 aforesaid. The present law-suit was begun June 4, 1905,* by petition to the Court of First Instance of Manila, the appellants here being the plaintiffs in said petition, and the appellees here the defendants therein. The material, practically undisputed, facts are, briefly, as follows:

The deceased intestate, Sy Quia, was born in China in 1822, or thereabouts. He emigrated to the Philippine Islands when about 12 years of age, married a Filipino woman there in 1853, according to the rites of the Roman Catholic Church and the laws of the Philippine Islands, and lived with her thereafter, in said Islands, in the bonds of matrimony until the date of his death in 1894. Dying in-

testate in the year last named, he left the large estate which is the subject-matter of this litigation. Five children were born of the marriage. After the death, in 1894, of the husband and father, Sy Quia, his estate was legally divided among the heirs in due course, according to the Spanish laws and customs. The widow and children, or persons claiming under them, remained in quiet, peaceable, and uninterrupted possession of the property so inherited from the death of the intestate husband and father in 1894 until the year 1905, when the present suit was formally instituted in the Court of First Instance at Manila in December, 1905.

To the foregoing summary of what we have termed the practically undisputed facts of this case, must now be added a summary of the additional facts alleged in the original petition in the trial court below. In the original petition, filed June 4, 1905 (Rec., pp. 1-5), the plaintiffs, who are

*The summons in this case, however, was not issued until the 4th day of December, 1905.

the appellants here, set forth their cause of action against the defendants, who are the appellees here, namely, the above-mentioned widow and children, claiming title to the whole of the estate of the deceased Chinaman, Sy Quia. They base their claim on a marriage alleged to have been contracted by the deceased, Sy Quia, with a Chinese woman, in the year 1847, fifty-eight years before the filing of their petition, in China, the plaintiffs claiming to be descendants of two children alleged to have been born of the supposed marriage with the Chinese wife. In other words, the original petition in this case is predicated upon a post-mortem unearthing of a marriage alleged to have occurred in the early youth of the deceased intestate, prior to his marriage in the Philippines, and the gravamen of the petition is that the plaintiffs, as descendants of the issue of the said Chinese marriage, are the heirs at law of the deceased. The trial court, the Court of First Instance at Manila, found in favor of the plaintiffs, the Supreme Court of the Philippines reversed the trial court and found in favor of the defendants, and the case is here for final adjudication, having been brought here both by appeal and by writ of error.

ARGUMENT.

I.

Has This Court Jurisdiction to Consider the Appeal in This Case?

An inspection of the original petition (Rec., pp. 1-5) is all that is needed to show that this case is not only essentially, but beyond all possibility of even plausible dispute, an *action at law*, brought by claimants claiming as heirs at law, and standing squarely on their alleged legal rights as such heirs.

The petition was filed on June 4, 1905 (Rec., p. 5). For the purpose of throwing light on the essential nature of the case, that is to say, whether it is an action at law or an equity cause, the following analysis of the petition is now respectfully submitted:

Paragraph I alleges that on or about the year 1823 the deceased intestate Sy Quia was born in China.

Paragraph II alleges that about 1847 he was married in Amoy, China, to a certain Chinese woman, whose name we may abbreviate for convenience to the single word "Yap;" and that thereafter Sy Quia and Yap "were and continued to be" husband and wife.

Paragraph III alleges that two male children were born of this marriage, to wit, Sy Bibo and Sy Biguel, and that these two thus "became and were" the only legitimate children and heirs at law of their father, the deceased intestate, Sy Quia.

Paragraph IV alleges that about 1882 Sy Bibo died intestate in China, leaving as his heirs at law two legitimate children, naming them.*

Paragraph V alleges that about 1880 Sy Biguel also died intestate in China, also leaving as his only heirs two children, naming them.†

Paragraph VI alleges that about 1891 Sy Quia's Chinese wife Yap, the mother of Bibo and Biguel, also died intestate.

Paragraph VII alleges that about 1894 Sy Quia himself died intestate in the city of Manila, and that his descendants born of the supposed Chinese marriage, that is to say, the plaintiffs, "at the time of his death became, ever since have been and are now his only legitimate descendants and heirs at law."

Paragraph VIII alleges that in his lifetime Sy Quia acquired a large estate, consisting of real and personal property, situated in the Philippine Islands, a great part of which was situated in the city of Manila, and that the estate is of the approximate value of one million pesos, Philippine currency (equivalent to five hundred thousand dollars American money).

Paragraph IX alleges that after the death of Sy Quia the defendants, and each of them, unlawfully, without right and in the absence of the plaintiffs, and each of them, took possession of all and every part of the real and personal property of the said Sy Quia, and that defendants, and each of

* The trial developed that these two children were supposed to have been a boy and a girl, and that the latter married, and died, leaving a minor son who, by his guardian, is one of the plaintiffs.

† Also supposed to have been a boy and a girl.

them, have ever since been in possession of the estate left by the said Sy Quia.

Paragraph X, stripped of its superfluous verbiage, alleges, in effect, that the defendants have been in possession of the estate ever since Sy Quia's death, and have been acting as if they owned it.

Paragraph XI is the first paragraph of the petition that attempts to make the case look like an equity case. It gives a partial inventory of the real and personal property belonging to the estate sued for, and says plaintiffs "have been unable to discover" all of it, because the title deeds and other documents are in the possession of the defendants. It will be seen further on that this paragraph is regarded by the plaintiffs as laying the foundation for a prayer for "discovery." Under the Code of Practice in the Philippines there are no separate courts of law and equity. The practice under American rule has been substantially identical with that which prevails in what are known in this country as "code" States. This at once suggests that the equitable doctrine of "discovery" has no application, because the defendants could be put on the witness stand and examined under oath.

Paragraph XII seems to have no special object. It merely repeats a previous statement, above noted, showing how much the plaintiffs think the property they are after is worth.

Paragraph XIII reiterates that the plaintiffs are the only legitimate heirs at law of the deceased, and that as such they are entitled to the estate. A faint attempt is injected at the conclusion of this paragraph to give the case an equitable tinge by the statement that the defendants have "converted" the property of the deceased to their own use.

Paragraph XIV merely reiterates and enlarges upon the idea that the defendants, ever since the death of Sy Quia, "have been, and are now, appropriating to their own use and benefit all the rents and profits of the property of the estate of the said Sy Quia, deceased." They then reiterate that the property does not belong to the defendants, but to the plaintiffs, and that as it is in the possession of the defendants it is impossible for the plaintiffs to "discover" the amount of the rents and profits which the defendants get from the estate, and upon this showing, substantially, without further material allegations than those already indicated, the plaintiffs have the temerity to suggest the desirability of the appointment of a receiver for the estate.

Paragraph XV alleges that the estate "has been and is being sold incumbered and converted by the defendants, and each of them, and there is danger" of loss, etc., and "irreparable injury and prejudice to the plaintiffs," unless a receiver be appointed. It will be noted that there is no charge of insolvency, or of fraud, accident or mistake, or anything of that sort. The gravamen of the text of this paragraph is simply that the defendants are in possession of the estate and acting as if they were the owners, which they claim to be.

Paragraph XVI alleges that, in order to protect the interest of the plaintiffs, it is "necessary" that the defendants be required to give a detailed accounting of the real and personal property of the estate, and of the rents and profits, and that "discovery on oath" be obtained from them.

This last paragraph concludes the allegations of the petition and is immediately followed by certain prayers. As already foreshadowed, these prayers pray for "discovery," "accounting," and for a receiver. The rest of the prayers simply ask, in effect, that the title of the estate be adjudged

to belong to the plaintiffs as the heirs at law, and that possession be awarded to them accordingly. It will, of course, be borne in mind that the foregoing analysis of the petition is expected to be read in connection with the petition itself, which petition is found at pages 1-5 of the record. Our analysis of the petition does not pretend to be a literal reproduction of all of its allegations. Obviously, the prayers of the petition cannot give it any virtue not previously imparted to it by its substantial allegations. For instance, this court has held that—

"When a party has a right of possession which he can enforce at law, his right to the rents and profits is also a legal right and must be enforced in the same jurisdiction. The instances where bill for an account of rents and profits have been maintained are those in which special grounds have been stated to show that the courts at law could not give a plain, adequate and complete remedy. No instances exist where a person who had been successful at law has been allowed to file a bill for an account of rents and profits during the tortuous possession held against him, or in which the complexity of the account has afforded a motive for the interposition of a court of chancery to decide the title and to adjust the account."

Ellis vs. Davis, 109 U. S., 485; 27 L. Ed., 1008.

It is true also that plaintiffs ask for discovery, but what kind of discovery? Is it the discovery of facts which are exclusively within the knowledge of the defendants and which are necessary and indispensable to give them a right to prosecute this action? Is not the discovery prayed more in the nature of an accounting that would have been granted if the plaintiffs had proven their title as heirs at law of the deceased *Sy Quia*? The mere fact that an equitable remedy is asked in the complaint does not make the character of the action such as to entitle a court of equity to take jurisdiction.

The fatal objection to plaintiffs' petition is that it is in

fact an attempt to give to an action of ejectment the semblance of a bill in equity. "The hand is the hand of Esau, but the voice is the voice of Jacob." Both the parties litigant in this case claim to own the legal title, and the defendants are in possession. The issue thus raised can only be tried in an action at law. The decree of the court below is the equivalent of a judgment of a court of law in an action of ejectment, namely, that plaintiffs recover possession of the premises, and also of the judgment of a court of law in an action of trespass for *meane profits*, that he recover such rents and profits. There are no averments in the bill which disclose any grounds of equity jurisdiction. There is no vestige of equity in the petition, nothing but the claim that the plaintiffs are the legal heirs of the deceased, and that, as such, they are entitled to the property sued for. It is clearly a case which, if instituted in a Federal court, must have been brought on the law side of the court and tried before a jury.

We respectfully submit that this court is without jurisdiction to entertain the appeal in this case, because the case is an action at law, and under the provisions of section 10 of the act of Congress of July 1, 1902, known as the Philippine Government Act (32 Stats., 691, 695), conferring appellate jurisdiction on this court over the Supreme Court of the Philippine Islands, the judgment of that court now sought to be reviewed here can be reviewed here by writ of error only, and not by appeal.

Section 10 of the act of Congress of July 1, 1902, known as the Philippine Government Act (32 Stats., 691, 695), is as follows:

"That the Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the Supreme Court of the Philippine Islands in all actions, cases, causes, and proceedings now pending therein or hereafter determined thereby in which the Constitution or any statute, treaty, title, right, or privilege of the United States is involved, or in causes in which

the value in controversy exceeds twenty-five thousand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; and *such final judgments or decree may and can be reviewed, revived, reversed, modified, or affirmed by said Supreme Court of the United States on appeal or writ of error by the party aggrieved, in the same manner, under the same regulations, and by the same procedure, as far as applicable, as the final judgments and decrees of the circuit courts of the United States.*"

It was thus the plain and express intent of Congress that in exercising appellate jurisdiction over the Supreme Court of the Philippine Islands the distinction between causes legal and equitable in their nature should be observed, and that cases should be brought here by writ of error if the cause of action was legal in its nature, and only by appeal if of equity, admiralty, or maritime jurisdiction. In other words, the whole body of the law and procedure governing review by this court of final judgments and decrees of the circuit courts of the United States is by this act made applicable, as far as practicable, to the jurisdiction of this court in reviewing final judgments and decrees of the Supreme Court of the Philippine Islands.

It is as true of ideas expressed in laws as of ideas expressed in human conduct that they can be better understood if we trace the pedigree of the agency through which they are expressed. Therefore let us very briefly trace the origin and development of the appellate jurisdiction of this court from the beginning down to the Philippine Government Act of 1902, above quoted, confining the inquiry, however, to matters distinctly tending to illustrate the case at bar, and the question of whether this court will or will not entertain the appeal in this case.

The article of the Constitution of the United States creating the Judicial Department of the Government (article

III) recognizes the distinction between legal and equitable causes of action, and reminds us that that distinction was as familiar to the lawyers of that day as it has been ever since. Section 2 of the article in question reads:

"The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States," etc.

The Seventh Amendment to the Constitution provided that the right of trial by jury should be preserved "in suits at common law," and added:

"No fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law."

The Tenth Amendment to the Constitution jealously provided:

"The powers not delegated to the United States by the Constitution * * * are reserved to the States, respectively, or to the people."

Inasmuch as there is no question of States' rights in this case, there remains only the inquiry as to what powers, relatively to the subject-matter in hand, have been vested in this court, since the Constitution, over the inferior courts which Congress has since seen fit to "ordain and establish."

Originally, no case whatever could be brought here by appeal. The judiciary act of 1789, creating this court, specifically limited its appellate jurisdiction to writs of error; and it was not until 1803 that jurisdiction by appeal, in certain specified cases, was superadded to the jurisdiction originally conferred by the act of 1789. Says Chief Justice Chase, in *Jones vs. La Vallette*, 5 Wallace, 79, decided in 1866:

"The judiciary act of 1789 gave appellate jurisdiction to this court by writ of error, and it was held that under that act no cause could be brought here by ap-

peal. *Blaine vs. Ship Charles Carter*, 4 Dallas, 22. The act of 1803 gave appellate jurisdiction by appeal 'from final judgments and decrees in cases of equity, of admiralty, and maritime jurisdiction, and of prize, or no prize.' *No other cases can be brought here in this mode*, and the case in the record is of neither class. It must come here, if at all, upon writ of error."

It has been the uniform construction of this court that cases at law could only be brought up from the inferior Federal courts on writs of error and were not subject to review upon appeal:

Wiscart vs. Dauchy, 3 Dall., 321.
Sarchet vs. United States, 12 Pet., 143, 144.
Parsons vs. Bedford, 3 Pet., 447.
Ward vs. Gregory, 7 Pet., 633.
Parish vs. Ellis, 16 Pet., 451.
McCullom vs. Eager, 2 How., 61.
Minor vs. Tillotson, 2 How., 392.
Surget vs. Lapice, 8 How., 48.
Bevins vs. Ramsey, 11 How., 185.
Brooks vs. Norris, 11 How., 204.
Graham vs. Bayne, 18 How., 60.
Brewster vs. Wakefield, 22 How., 118.
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Armstrong's Foundry, 6 Wall., 766.
Walker vs. Dreville, 12 Wall., 440.
Burrows vs. The Marshall, 15 Wall., 682, 684.
Van Northen vs. Morton, 99 U. S., 378.
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- Ætna Life Insurance Co. vs. Ward*, 140 U. S., 91.
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De Land vs. Platte County, 155 U. S., 221.
Bucklin vs. United States, 159 U. S., 680.
Elliott vs. Toeppner, 187 U. S., 334.
Comstock vs. Eagleton, 196 U. S., 100.
Oklahoma City vs. McMaster, 196 U. S., 529.
National Live Stock Bk. vs. First National Bk., 203 U. S., 305.

See also, for the Philippine Islands, the case of *Behn vs. Campbell*, 200 U. S., 611, where this court dismissed an appeal on the ground that the case was an action at law, and therefore not reviewable by appeal, citing the cases of *Walker vs. Dreville*, *De Land vs. Platte Co.*, and *Comstock vs. Eagleton*, *supra*. See also, from the Philippines, *Martinez vs. International Banking Corporation*, 220 U. S., 214. The cases of *De La Rama vs. De La Rama*, 201 U. S., 303, and *Strong vs. Repide*, 213 U. S., 419, were peculiarly cases of equitable jurisdiction and cannot be construed to overrule all the previous decisions of this court concerning the distinction between appeal and writ of error.

All the American colonies which made up the thirteen original States of this Union had the law of England as the basis of their jurisprudence. The first period at which this court came to deal with cases coming up from territory acquired from Spain was after the acquisition of Florida, in 1819. In the case of Florida, Congress prescribed that the practice to be observed in bringing cases to this court for review from the highest court of the Territory of Florida should be identical, as far as practicable, with the practice governing the appellate jurisdiction of this court over the circuit courts of the United States. The act of Congress of July 14, 1832, section 3 (4 Stats., 600), conferring appellate jurisdiction on this court over the Court of Appeals of the Territory of Florida, provided that the regulations of section

2 of the judiciary act of March 3, 1803, "as far as said regulations shall be practicable, shall be observed in respect to all writs of error and appeals from the said Court of Appeals in the said Territory to the Supreme Court of the United States." It will be observed that the qualifying words "as far as practicable" are used in this act just as the words "as far as applicable" were subsequently used in section 10 of the act of Congress of July 1, 1902, providing a civil government for the Philippines, *supra*. Yet this court in 1842 in the case of *Parish vs. Ellis*, 16 Pet., 451, dismissed an appeal from the Court of Appeals of Florida Territory upon the ground that the rights set up and the method sought to be pursued for enforcing the same were essentially legal and not equitable.

In that case a widow petitioned for allotment of her dower out of real estate left by her husband, and also for her share of the personal property, consisting of negroes and other personalty, claiming to be entitled to one-half of each under a law passed by the Territory of Florida in 1838. Said Chief Justice Taney, in delivering the opinion of the court:

"The question then, is whether the proceedings in the Florida courts were in a case at law. They certainly differ from the ancient common-law proceeding by writ of dower; and, indeed, they necessarily differed from it, because the *widow's share of the negroes and personal property were united in the same proceeding that was instituted to recover her dower in the real estate*; and it certainly does not strictly conform to any of the modes of proceeding known to the common law. But in many of the States and Territories the ancient common-law remedy for the purpose of obtaining an allotment of dower, as well as the remedies for other mere legal rights, has been changed for others more convenient and suitable to our situation and habits. Yet they are regarded as cases at law, although they are not carried on according to the forms of the common law. In the case of *Parsons vs. Bedford* and others, 3

Peters, 447, the court when speaking of remedies of this description, said, that all suits brought to settle *legal rights which were not of equity or admiralty jurisdiction, whatever might be their peculiar forms*, were cases at law, within the meaning of those terms, as used in the Constitution and acts of Congress. *In a case like the present, it is true that although the right is strictly a legal one, yet the court of chancery possesses concurrent jurisdiction with the courts of law. But the proceeding in question is obviously not according to the principles or established practice of courts of equity, and was not intended to be such. It could not be sustained in any court under the rules of a court of chancery; and must therefore be regarded as a proceeding at law. And being a case at law it cannot, under the acts of Congress before mentioned, be brought here except by writ of error. The appeal must therefore be dismissed."*

If now we turn from the Florida acquisition from Spain to the Louisiana purchase from France, and study the attitude of this court toward another part of the territory of the United States deriving its original jurisprudence from the civil law, we find the court uniformly maintaining, "as far as practicable," in cases from Louisiana, as in cases from Florida, the original distinction made in the Constitution, and in the acts governing the appellate jurisdiction of this court, between actions at law and equity causes, and holding always to the rule that where a case is essentially an action at law, it can be reviewed by this court only on writ of error. In *Walker vs. Dreville*, 12 Wallace, 440, 442, Mr. Justice Miller, delivering the opinion of the court, said:

"We have so often decided that notwithstanding the peculiarities of the Civil Code of Louisiana, the distinctions between law and equity must be preserved in the Federal courts, and that equity causes from that circuit must come here by appeal, and common-law causes by writ of error, that we cannot now depart from that rule without overruling numerous decisions and a well-settled course of practice."

The Code of Louisiana is very similar to the Spanish Code for Cuba, Porto Rico, and the Philippines, which has remained in force under American rule. Both have what they call an action of "revindication." This action is dealt with in the Louisiana Code in articles 4, 12, and 43, and by the Spanish Code of 1889 for Cuba, Porto Rico, and the Philippines in its article 348. This statutory action of "revindication" offers in both jurisdictions a plain and adequate remedy at law for persons claiming title as heirs at law against persons in possession of an inheritance.

Article 348 of the Spanish Civil Code of 1889 for Cuba, Porto Rico, and the Philippines reads as follows:

"La propiedad es el derecho de gozar y disponer de una cosa sin mas limitaciones que las establecidas en las leyes.

"El propietario tiene accion contra el tenedor y el poseedor de la cosa para reivindicarla."

Translation.

"Ownership is the right to enjoy and dispose of a thing without further limitations than those established by the laws.

"The true owner has a right of action against the holder and the possessor of the thing to recover it."

The case at bar is essentially an action of "revindication," and is thus fully provided for by the Civil Code of the Philippines. Plaintiffs claim title as heirs at law of the deceased, and if their claim be true their remedy is plain. No act of the defendants gives these plaintiffs a right to prosecute this action; no act outside their own alleged legal rights give them ground to institute this action. This court in *Gaines vs. Chew*, 2 Howard, 647, used the following language:

"It is upon the ground that such a remedy is plain and adequate and complete, that equity will not give relief. There can be no doubt, as between the heir

at law and the devisee, in ordinary cases, the proper remedy is to be found in a court of law." (*Gaines vs. Chew et al.*, 2 How., 647.)

Let us now turn to this court's interpretation of the action of revindication under the Louisiana Code.

In the case of *Ellis vs. Davis*, 109 U. S., 485, this court held that a bill in equity could not be sustained in the circuit court to recover possession of real estate, part of which was devised to the defendant and part given to him by the testatrix, and to set aside the will and conveyance so obtained by undue influence and for an account of the rents and profits, where the title asserted by plaintiff is not an equitable but a legal title; and that his remedy at law was plain and adequate.

The court also held in *Ellis vs. Davis*, that under the law of Louisiana an action of revindication is the proper one to be brought for the purpose of asserting the legal title and consequent right of possession of the heir at law to the succession, when another is in possession under claim of title by virtue of a will admitted to probate, and that that action furnishes a plain, adequate, and complete remedy at law, and excludes a suit in equity for the purpose. In rendering its opinion, this court quotes the case of *Sharp vs. Knox*, 2 La., 23, wherein it was said:

"When an action of revindication is instituted by an heir at law against the testamentary heir or universal legatee who has been put in possession of the estate and who sets up the will as his title to the property, district courts are the proper tribunals in which such suits must be brought and that in this case the petitioner himself shows that the defendant holds the property claimed under a will and confirmatory act, which she seeks to set aside. This she cannot do except in a court of ordinary jurisdiction."

The opinion of the court in the case of *Davis vs. Ellis* also says:

"By the law of Louisiana, C. of Pr., art. 4, a real action is given, which relates to claims made on immovable property, or to the immovable rights to which they are subjected, the object of which is the ownership or the possession of such property, and when prosecuted by one having the title against the person in possession, is called the petitory action, and is the proper action for recovery of an universality of things, such as an inheritance. C. of Pr., art. 12. It is an action of revindication, C. of Pr., art. 43, and is the proper one to be brought for the purpose of asserting the legal title and consequent right of possession of the heir at law to the succession, when another is in possession under claim of title by virtue of a will admitted to probate, as is abundantly shown by the citations already made from the decision of the Supreme Court of Louisiana."

In the case of *United States vs. C. A. Wilson*, 118 U. S., 86, it was held that

"The remedy of a person having the legal title to real estate, but kept out of possession by a person holding adversely, is at law to recover the possession."

By section 705, United States Revised Statutes, it was provided that this court should have jurisdiction to review final judgments and decrees of the Supreme Court of the District of Columbia "in the same manner and under the same regulations as are provided in cases of writs of error on judgments, or appeals from decrees rendered in a circuit court." In *Ormsby vs. Webb*, 134 U. S., 47, it was held that writ of error was the proper mode of review of proceedings for the probate of a will in the Supreme Court of the District, "*although the proceeding may not be technically one at law*," the court, by Mr. Justice Harlan, saying (p. 64):

"A proceeding in this District for the probate of a will, although of a peculiar character, is nevertheless a case in which there may be adversary parties, and in which there may be a final judgment affecting rights of property. It comes within the very terms of the act of Congress defining the cases in the Supreme Court of this District, the final judgments in which may be re-examined here. If it be not a case in equity, it is to be brought to this court upon writ of error," although the proceeding may not be technically one at law, as distinguished from equity."

In the case of *Behn vs. Campbell*, 200 U. S., 611, this court definitely, specifically, and finally adopted and endorsed the applicability of our time-honored distinction between appeals and writs of error to cases coming from the Philippines. In that case an appeal was dismissed upon the ground that the judgment of the Supreme Court of the Philippines in an *action at law* will not be reviewed here by appeal but by writ of error only. This case has never been reversed and must control the case at bar on the question of the appeal.

The foregoing rather elaborate exposition of the law related to the question of the appeal in this case would not have been indulged had it not been for the fact that our adversaries appear to seriously contend that this case is properly here on appeal. They rely, in support of this contention, on two cases from the Philippines, to wit, *De La Rama vs. De La Rama*, 201 U. S., 303, and *Strong vs. Repide*, 213 U. S., 419. The case of *Strong vs. Repide* was peculiarly a case for a court of equity. In that case Mrs. Strong had been induced to part with certain valuable stock by her business agent upon the faith of false and fraudulent statements made by him to her that the stock was practically worthless, by means of which false statements her agent profited in subsequent manipulation of the stock. The *De La Rama* case was also peculiarly an equity case, involving, as it did, the dissolution of a conjugal partnership and the liquidation of the "assets" or joint property of that partnership. See

also *Martinez vs. International Banking Corporation*, 220 U. S., 214.

Our adversaries seem to think that because the courts below differed in the case at bar, that circumstance would give standing in this court to an appeal otherwise not properly brought here. They further argue that this view may be urged "with all the more reason where, as here, the division of opinion exists not only as between the upper and lower court, but extends to the members of the higher tribunal." Then they quote section 1 of act 1596 of the Philippine Commission, which gives the Supreme Court of the Philippines authority to reverse the Court of First Instance where they are of the opinion that "a preponderance of the evidence" justifies such reversal, and add:

"It follows that the real question for this court to consider is whether the evidence introduced by the appellants and plaintiffs in the Court of First Instance was sufficient to justify the findings of the judge of that court * * *."

In other words, our adversaries appear to expect this court to examine the facts in this vast and voluminous case *de novo*. We do not believe this court will do any such thing.

The clear net purport, intent, and meaning of all the Philippine cases which have come before this court since we acquired those Islands is that as to cases from the Philippine Supreme Court this court will, under section 10 of the Philippine Government Act of July 1, 1902, preserve the same distinction between appeals and writs of error which it has uniformly recognized for more than one hundred years in the exercise of its appellate jurisdiction over final judgments and decrees of the circuit courts of the United States. If the position of our adversaries is correct, it means, in its last analysis, that this court may be asked and expected to re-examine *de novo* all the facts upon which may have been based any judgment or decree rendered in any case whatsoever, whether legal or equitable, by the Supreme Court of

the Philippine Islands, provided only the case involves the requisite jurisdictional amount to get here. With deference we submit that it never was the purpose or intent of Congress to impose any such burden upon this court.

II.

The Writ of Error.

Having finished with the appeal in this case, we must now cordially concur in the soundness of the apparent belief of our adversaries that their writ of error has no standing before this court.

"An appeal brings up questions of fact as well as of law, but upon a writ of error only questions of law apparent on the record can be considered, and there can be no inquiry whether there was error in dealing with questions of facts."

Behn vs. Campbell, 205 U. S., 403, 407.

This was a case from the Philippines decided in 1907. It cites with approval a line of American cases stretching from *Wiscart vs. D'Auchy*, 3 Dall., 321, to *Elliott vs. Toeppner*, 187 U. S., 327. See also *Miles vs. U. S.*, 103 U. S., 304.

"Questions respecting the weight of evidence cannot be reviewed on writ of error."

U. S. Express Co. vs. Kountze Ross, 8 Wall., 342.

The Philippine cases of *De La Rama vs. De La Rama*, 201 U. S., 303, and *Strong vs. Repide*, 213 U. S., 419, were equity causes, and the re-examination of the facts which this court made in those cases was predicated upon its jurisdiction by appeal.

III.

THE FACTS.

Substantial justice has been done by the decision of the Supreme Court of the Philippine Islands in this case.

Before going into the testimony we will first contrast plaintiffs' and defendants' claims as to the facts.

Presentation of Facts.*Plaintiffs' Case.*

1. That on or about the year 1823 one Sy Quia, thereafter known in the Philippine Islands as Vicente Romero Si-Quia, was born in China.

2. That on or about the year 1847 the said Sy Quia was married in the city of Amoy, China, to one Yap Puan Niu, and that he and Yap Puan Niu continued to be husband and wife.

Admitted generally by plaintiffs.

Defendants' Case.

1. *Defendants claim that the only fact plaintiffs have succeeded in proving is that Vicente Romero Sy Quia was born in China. Defendants also claim that the Sy-Quia to which the Chinese witnesses referred is not the same one who was later known as Vicente Romero Si-Quia.*

2. *Defendants allege that in the year 1847 Sy Quia was in Vigan, Philippine Islands, and therefore could not have been in China, and much less married there; they also deny specifically plaintiffs' contention and claim that the evidence introduced by the plaintiffs to support it has utterly failed to prove it.*

As against this fact the defendants allege (a) that prior to the year 1852 Vicente Ruperto Romero Sy Quia was a non-Christian Chinaman known only by the name of Sy Quia, re-

Admitted by plaintiffs.

siding in the Philippine Islands for many years prior to the said year 1852.

(b) That on the 11th of June, 1852, the said non-Christian Chinaman, Sy Quia, was converted to Christianity, receiving the baptismal waters in the parish of San Vicente Ferrer, Province of Ilocos Sur, Philippine Islands, and the names of Vicente Ruperto Romero Sy Quia. (To this allegation they accompany an entry of baptism and certificate of baptism, duly authenticated.)

Admitted by plaintiffs.

(c) That on the 9th of June, 1853, in the city of Fernandina, of Vigan, Philippine Islands, the Chinaman converted to Christianity, Vicente Ruperto Romero Sy Quia, contracted a legitimate canonical marriage in accordance with the laws then in force in the Philippine Islands, with Petronila Encarnación, Indian, a native of Vigan, Province of Ilocos Sur. (Copy of the marriage certificate is also accompanied to support this fact.)

Facts admitted by plaintiffs.

(d) That Vicente Ruperto Romero Sy Quia and his wife, Petronila Encarnación, established and fixed their residence and conjugal domicile in the Philippine Islands, where, as a matter of fact they maintained their conjugal domicile from the

celebration of their marriage, from the 9th of June, 1853, until the dissolution of the same by death of the husband, Vicente Ruperto Romero Sy Quia, which occurred on the 9th of January, 1894.

3. That of the marriage of said Sy Quia and said Yap Puan Niu there were born two male children, Si Bi Bo and Si Bi Git, who were the only legitimate children and heirs at law of the said Sy Quia.

3. This is specifically denied by the defendants.

4. That on or about the year 1882 the said Si Bi Bo died intestate in China, leaving as his only legitimate children and heirs at law plaintiffs, Si Yoc Chai and Si Hui Niu and the said plaintiffs Si Yoc Chai and Si Hui Niu ever since the death of Si Bi Bo became, and are now the only legitimate and surviving children of said Si Bi Bo, deceased.

4. This is specifically denied by the defendants, who also claim that Sy Yoc Chai's personality has not been proven.

5. That on or about, the year 1880 the said Sy Bi Git, the other legitimate child and heir at law of the said Sy Quia and Yap Puan Niu died intestate in China, leaving as his only surviving children and heirs at law, plaintiffs, Sy Yoc Ling and Sy Chiao Niu, who, since the death of said Si Bi Git have been and are now the only legitimate surviving children and heirs at law of said Sy Bi Git, deceased.

5. This is specifically denied by the defendants.

6. That on or about the year 1891 the said Yap Puan Niu, wife of said Sy Quia, died intestate in China, leaving surviving her her husband, the said Sy Quia and the plaintiffs herein, her only grandchildren, who, ever since her death, have been and are now her only legitimate children.

7. That on or about the year 1894 Sy Quia died intestate in the city of Manila, Philippine Islands, leaving surviving him plaintiffs herein, his grandchildren, who, at the time of his death, became, and ever since have been, his only legitimate descendants and heirs at law.

6. *This is denied specifically by defendants.*

7. *The fact that plaintiffs are legitimate heirs or descendants of Sy Quia has been denied specifically by the defendants and against it the defendants allege the following:*

That on the 9th day of January, 1894, in the city of Manila, Don Vicente Ruperto Romero Sy Quia, legal husband of the defendant, Petronila Encarnacion, and legal father of the defendants, Gregorio, Pedro, and Juan Sy Quia, and Generoso Mendoza Sy Quia, died intestate, and after the legalities in accordance with the legislation then in force, by order of the Court of First Instance of Quiapo, dated January 26, 1894, his living children, Apolinaria, Gregorio, Pedro, and Juan, born as alleged, in legitimate wedlock with Petronila Encarnacion, and his grandchild, Generoso Mendoza Sy Quia, in representation of his mother, Maria Romero Si-Quia, deceased, were judicially declared heirs of the

8. That during his life, Vicente Romero Sy Quia acquired a large estate, consisting of real and personal property situated in the Philippine Islands.

9. That on or about the 3d day of August, 1900, the defendants and each of them, unlawfully, without right and in the absence of the plaintiffs and each of them, took possession of all and every part of the real estate and personal estate of the said Sy Quia, otherwise known as Vicente Romero Sy Quia, deceased, and said defendants and each of them have, as aforesaid, ever since been managing and administering the said real and personal estate of the said Vicente Romero Sy Quia, assuming acts of ownership and dominion over said estate of the said Sy Quia, deceased.

intestate. (Copy of said decree is attached and made a part of this document, marked Exhibit 8.) (See Rec., 18-20, 85, 86.)

8. *As against this fact the defendants allege:* That at the celebration of his marriage with Petronila Encarnacion, Vicente Ruperto Sy Quia had no property whatsoever, and therefore brought nothing into the marriage with Petronila Encarnación, while she brought into the conjugal society a small capital, which was the basis of a larger one acquired later by the spouses through their work and industry, and through the work and industry of their children.

9. As against this fact defendants allege that by order of the Court of First Instance of Intramuros dictated August 3, 1900, the partition of the estate of the deceased Vicente Romero Si Quia amongst the living children of said deceased, Apolinaria, Gregorio, Pedro, and Juan, and his grandchild Generoso Mendoza, in representation of his deceased mother Maria Romero Sy Quia, was approved (Rec., 18).

10. That since on or about the 3d day of August, 1900, the said defendants and each of them have converted and are converting part of the estate of the said Sy Quia to their and each of their own use and benefit and have converted a great part of said estate into other real and personal property unknown to the plaintiffs and to each of them, and said defendants and each of them are now in possession of said property so converted from the real and personal property left by the said Sy Quia as aforesaid, exercising acts of ownership and dominion thereon.

10. As against this the defendants allege that the plaintiffs in this case resided in the Philippine Islands at the time of the death of Vicente Ruperto Romero Sy Quia, and knew the fact of the death of said Vicente Ruperto Romero Sy Quia, and furthermore, the plaintiffs at the time had knowledge and advice that the defendants had asked and received the declaration of heirs and approval of the partition of the estate in their favor and which is referred to in the above paragraphs.

Having thus presented the issues of fact we shall now proceed to discuss the evidence adduced by plaintiffs and defendants in regard to each of their respective contentions.

PLAINTIFFS' EVIDENCE.

Oral Testimony.

The first and principal witness for the plaintiffs is Sy Peng (Rec., 125-183). Sy Peng is a remarkable man. Although six or seven years old at the time, he remembers, with astounding precision, that Sy Quia went to Manila at the age of twelve years (Rec., 127), and is able to tell us, after the lapse of fifty years, that Sy Quia stayed in Manila until he was twenty-five years of age, and then went back to China to marry a girl, a certain Yap Puan Niu, whose name he also is able to give, in spite of the fact that the first time he ever knew her was on the day the alleged marriage took place. Although he remembers so well the name of Sy Quia's alleged wife, her age, and the names and ages of the wives of their two sons, Sy Bi Bo and Sy Bi Git, and those of their sons' daughters, he does not know the names or the ages of the wives of Sy Yoc Ling or Sy Yoc Chai, nor of any of the women who are living at present, and with whom he has been but a few days before (Rec., 167-168). Yet, he must have seen them every year for many years before, if we are to believe his testimony that he went to their house to see certain mortuary tablets every year at the respective anniversaries of the deaths of the parties whom those tablets are supposed to represent (Rec., 180). He is so eager, so willing always to tell what was Sy Quia's age when he married, that every time he has a chance to say it he does so, whether or not the question put to him calls for the information (see Rec., 129):

"When was this man married?

"He came home to be married when he was 25 years old."

Rec., 136:

"When were these parties married?"

"When Sy Quia came home from abroad, when he was in about his 25th year."

And at Rec., 169:

"He went abroad at the age of 12 or 13 and remained abroad until he came home, that is, in his 25th year; this is not a personal matter of mine and I cannot be expected to remember the exact dates."

And yet, this same witness, who has such a good memory, and who, after sixty years, is able to remember what Sy Quia's age was at a certain time, and who, at the same time, asks to be excused for not being able to be more accurate, because it is not a personal matter of his, voluntarily shows us that he has such a poor memory for his own personal matters that he cannot remember the dates of the death of any of three wives (Rec., 170).

This same witness, who can remember so well the respective ages of Sy Quia, Yap Puan Niu, Si Bi Bo, Sy Bi Git, Sy Yoc Chai, Sy Yoc Ling, Sy Hui Niu, Sy Chua Niu, and others, at different stages of their respective lives, makes a mistake as to the year of his own birth, giving it first as that of the "Rat" and changing it afterwards to that of the "Pig" (Rec., 161, 182). And when asked "How old were you when Sy Quia got married?" (Rec., 161) answers:

"I was either 20 or 21 years old then. I am so old, that I cannot remember exactly."

Is it not really surprising also that a man, sixty years and more, after the occurrence of an event which, according to himself, was not a personal matter of his at all, should remember it even to the last detail, and give us an account as realistic and complete of the same as if it had taken place only two or three days before? Yet, this witness gives an account of Sy Quia's marriage from beginning to end (Rec., 156) as full and detailed as any account given in the morning papers of today about a wedding that took place the

afternoon before, even with the list of presents and the dress the bride wore.

At times his memory gives him away. Without being asked (Rec., 169), he gives the information that at the time of Sy Quia's death "the women folk of his house paid a visit of condolence to his (Sy Quia's) wife in China." He tells us this voluntarily, because the question put to him did not call for the information. He discovers soon after that he has remembered too much, and tries to amend it, saying that he did not mean that, that Sy Quia's wife had been dead long ago.

No data whatever can we find in the testimony of this witness, nor in that of the others who followed him, from which we may fix with positive certainty the important dates on which the main facts at issue in this case are supposed to have taken place.

During the testimony of this witness certain tablets were introduced which plaintiffs claim furnish the data above alluded to. We will deal with the tablets later on, when it is hoped we will be able to demonstrate their spuriousness.

Outside of the positive statement given by this witness that Sy Quia was 25 years old at the time he was married, without showing any satisfactory reason to explain this wonderful feat of memory, we find throughout the testimony the indefinite "about," "upwards of," "more than," etc., which certainly cannot be relied on to fix a certain definite date from which depends the plaintiffs' case.

The next witness called in by the plaintiffs was Lim Chio (Rec., 184-199). She tells us, at page 184, that she is seventy-seven years old. With a memory as remarkable as that of the witness who preceded her, she also can remember with astounding precision the age of Yap Puan Niu when she married Sy Quia and also Sy Quia's age, and this, in spite of the fact that she had never met Sy Quia until after the wedding had taken place (Rec., 195). She also tells us that she knew Yap Puan Niu, because although she had never met her until the very day of her wedding, the latter

had acted as her maid at the time of the witness' wedding (Rec., 184). And yet (Rec., 195) she tells us that it is a fact the bridesmaids are always very intimate friends or very near relatives of the bride. Although she says that her age is seventy-seven years yet the only reason she gives for knowing her age is the fact that her sons celebrate her birthday every year (Rec., 192). In her testimony she always keeps in mind the fact that Sy Quia came home to be married when he was twenty-five years old; that he stayed in China three or four years after the marriage, and she is able to give all the details as to the birth of Sy Quia's children and the children of Sy Bi Bo and Sy Bi Git because of the fact that she had received cakes, etc., at the time of their respective births. She is able to say the different times at which these births and deaths took place, although sixty-odd years have intervened. Like the preceding witness she also gives us as detailed an account of the marriage as a newspaper reporter could give it of one which took place the day before. She remembers what was done almost every day during the celebration of the marriage, although she was not present at every ceremony. In spite of her alleged intimacy with Yap Puan Niu, and in spite of remembering all the details and different events of Yap Puan Niu's life, she is unable to tell us what was Yap Puan Niu's nickname (Rec., 193). Now, if we turn to page 171 of the printed record we will find that the witness Sy Peng, reading one of the tablets, Exhibit "1," of the plaintiffs, which is made part of this record, finds the name Puan Kun, and explains that this name means "diligent" and was the nickname given to the woman Puan because she was very diligent in her household work. Lim Chio, however, the intimate friend of Yap Puan Niu, who even had her as a bridesmaid at the time of her wedding, does not know who Puan Kun was (Rec., 193). This witness, again, who knows all the details of the wedding of Sy Bi Bo and the name of his wife, does not know who Mrs. King Niu, the one appearing as Sy Bi Bo's

wife in tablet No. 2, Plaintiffs' Exhibit No. 2, was (Rec., 194). This witness, Lim Chio, who can give us so many details as to the marriage of Sy Bi Bo and Sy Bi Git, the names of their respective wives, the names of their respective children, and the different times of the latter's birth and the former's death, tells us (Rec., 196):

"Did you know Sy Bi Bo's and Sy Bi Git's wives and did you see any of the four of their children after the former were married, if so, state where, when and how many times?

"I have never met the wives of Sy Bi Bo and Sy Bi Git. I have seen their children with the exception of Yoc Chai.

"How many times, when and where?

"I have never met Sy Yoc Chai. This is the only son of Sy Bi Bo."

This witness gives no data whatever by which we could fix positively the important dates so necessary to the plaintiffs' case. With a degree of indefiniteness equal to that of Sy Peng, when her memory fails her she shields herself with the indefinite expressions "about ten years," "about sixteen years," "more than twenty years," "more than ten years," etc.

We might go on quoting one by one the almost stereotyped declarations of the several witnesses who testified in China as regards the facts alleged by the plaintiffs; we might go on pointing out the same conditions in the testimony of each one of the witnesses Yap Si Tan, Yap Chia, Sy Kai Tit, Yap Chong, Sy Kong Leng, and Sy Jong Oan, but it would be superfluous repetition. All of these nine witnesses seem to testify after a specially cut pattern, which, more or less, sounds like this:

That Sy Quia left China when he was twelve years old.

That he went back to China when he was twenty-five years old.

That at that age he married Yap Puan Niu.

That a year after the marriage Sy Bi Bo was born.

That a year later Sy Bi Git was born.

That soon after that Sy Quia went back to Manila.

That a few months later he came back as supercargo of a certain boat.

That he stayed a few days and left again.

That he came back again about ten years later, but did not stay long, only about a year, after which he went back to Manila and never came back again.

That Sy Bi Bo was married when he was about twenty-two years old.

That Sy Bi Git was married a year later.

That Sy Bi Bo had two children, one boy and one girl.

That the boy died a very short time after he was born and in his place Sy Yoc Chai was adopted.

That Sy Bi Git also had two children, one boy and one girl.

That the girl born to Sy Bi Bo died a few months before the taking of the depositions.

That she left a child, a boy.

That Yap Puan Niu died "more than" or "about" 15 or 16 years before (some also say "more than 12"; one said "more than 60 years ago" (Rec., 224).

And Sy Quia "more than twelve years before."

And Sy Bi Bo died "more than 10, 15 or 20 years before."

And Sy Bi Git "more than twenty years before."

And Ho Gim Niu (the alleged wife of Si Bi Bo) "more than ten years before."

And Yap Sung Niu (the alleged wife of Sy Bi Git) "more than twenty years before."

But in spite of the striking concordance of all these witnesses as to all these facts which took place such a long time ago, ranging within a period of from sixty-eight to ten years, facts told with almost identical seeming accuracy, even to the details of the wedding ceremony and the name

of the mediator who arranged the wedding, yet these same witnesses seem to falter when asked about matters other than those above set forth, even about their personal affairs.

Let us study the question of the credibility of these witnesses:

We have already commented on the testimony of Sy Peng and Lim Chio, and therefore we shall proceed to point out the fact that Yap Sy Tan, who is able to give the ages with great precision and is positive about her own age, is only able to tell us that she was born the year of the Cow, but does not know of what cycle or what dynasty.

The witness Yap Chia (Rec., 213), who, not having known Sy Quia until the day of his alleged marriage to Yap Puan Niu (Rec., 226-7), knows the time Sy Quia had been in China before said marriage (Rec., 216); he knows the respective ages of some persons to a certainty when (Rec., 222) he tells us that he cannot count any given age and does not know even the year in which he is testifying. This witness also remembers even the presents Yap Puan Niu received at the time of her wedding (Rec., 215). Also how long Sy Quia and Yap Puan Niu stayed in Lao Puan when they came to visit her old home (*ibid.*); and even that after worshipping the family gods Sy Quia and Yap Puan Niu retired to their room to change their clothes. He remembers how old were Sy Bi Bo and Sy Bi Git when they were married, and the time when their respective children were born, although he was not very intimate with them, or attended their wedding or their funeral (Rec., 227), or even called on them (*ibid.*). Though he never had lived in Am Thau, or had ever been there until he was about 50 or 60 years old, yet he can remember how many times Sy Quia went to Am Thau and how long he stayed each time (Rec., 226).

As to the witness Sy Kai Tit, we have only to quote several paragraphs of his testimony to show that it is unworthy of belief (Rec., 235):

"State, if you know, where Sy Bi Git is."

"He is abroad. No, Sy Bi Git is dead."

"When did he die?"

"Sy Bi Git has been dead about 50 years now."

"Where did he die?"

"In Am Thau. From the date of his birth until now is 50 years, but he has been dead more than ten years. No. More than 20 years."

"When did he die in reference to the time of the death of his mother?"

"He died before his mother."

And again (Rec., 237-238):

"State if you know whether Sy Bi Git and his wife had any children, and, if so, how many?"

"Yes, Sy Bi Git had Sy Yoc Chai. No Sy Yoc Ling and Chiao Niu."

At page 236 he states:

"On the day of the marriage the Red Chair party was sent to meet the bride, and on her arrival in the Red Chair she was met by the groom in *official costume* and so forth, in his house. They worshiped heaven and earth and were thus married amid the firing of firecrackers."

At page 242 he tells us, however:

"What office did Sy Quian hold at the time of his marriage?"

"None."

"What was he?"

"*He was a man who had been abroad to earn his living. He was no official.*"

Again on this same page we find the following:

"How long is it from that Sy Quian was married?"

"Eighty-four years ago. I mean from the time he was a boy up to now it is 84 years."

"How old was Sy Quian when you knew him as a boy?"

"I did not know Sy Quian as a boy; the first time

I knew him was when he came home to be married.

"How many years was Sy Quian married to Yap Puan Niu? Give us a direct answer, please.

"About sixty years or more."

"How old was this Sy Bi Bo when Yap Puan Niu died?

"He was more than forty years old."†

And finally, this witness gives the remarkable information that he, a *boy of twelve years* at that time, *took part as informer* in Sy Quia's wedding prearrangements (Rec., 240-241):

"Did you take part in any of those conversations?

"I was present when the negotiations and so forth took place.

"Did you take part in them?

"I was helping there doing what job I could.

* * * * *

"You still have not answered the question. Did you take any part in the discussion?

"Yes, I took part.

"Did you not say just a moment ago that it was only Sy Quian's parents who took the negotiations up with the mediator?

"Yes, I did say that. His parents were the oldest members of the family and therefore they had the deciding authority in the matter. Some of the younger ones were then in Manila, the part I took was to do what little I could then in the way of making inquiries.

"And you were then only a twelve-year-old boy?

"About that age.

"What kind of information and inquiries did you make?

"The inquiries I had been making was to ascertain whether the girl had been married before (etc.).

* * * * *

*(NOTE.—This makes Sy Quia and Yap live until 1907.)

† (NOTE.—And he was already dead.)

"Did you make formal report before the family council and the mediator after you found out those things?

"I reported the result to Sy Quian's father.

"Then Sy Quian's father, from what you say, did not have much confidence in Yap Puan, did he?

"Sy Quian's father had to make an inquiry anyway, he was old, did not like to go himself, so he sent me as a boy to do it for him."

Yap Chong says he was 60 years old at the time Yap Puan Niu died (Rec., 255). Witness gives us the date of Yap's death as about 1894 or 1895, thus supporting the statement on the tablet No. 1 and contradicting all the rest of the witnesses:

"How old are you?

"Seventy-one years old.

"How old were you when Yap Puan Niu died?

"I was about 60 years old."

The witness Sy Boan, when asked (Rec., 262) how long Yap Puan Niu had been dead, says:

"She has been dead more than 10 years, 13 or 14 years. No she has been dead 15 or 16 years."

At Rec., 268, we find the following questions and answers:

"How old was Sy Bi Git when Yap Puan Niu died?

"More than 20 years.

"And how old was Sy Bi Bo at the time Yap Puan Niu died?

"More than 20 years old, less than 30 (which would give us Yap Puan Niu's death in 1876 or 1877).

"No. At the time Yap Puan Niu died Bi Bo had been dead."

The witness Sy Jong Oan claimed to be able to write in Chinese characters the name of Vicente Romero Sy Quia, yet he is not able to write the same sounds of that name

when given to him, in spite of the fact that he is able to compose such characters.

"Have you ever seen the name Vicente Romero Sy Quia written in Chinese characters?

"I have never seen the name written in Chinese. All his letters, that is letters addressed to him from China, in Chinese, by Chinese, gave his name as Sy Tiong Quian.

"Therefore the Chinese characters you have written here are your composition?

"Yes, my composition, trying to write his name as he was known in Manila.

"Will you please write in Chinese characters the name Leo-Degario Aguilar?

"There is no such sound in Chinese.

"Will you please write the name Francisco Gutierrez?

"It is very difficult to express the sound in Chinese.

"Will you please write the name Adolfo Zunega?

"No, I cannot write those names.

"Will you please write the name Ro-que Ma-dei-na Vi-to?

"No, I cannot write those names."

This same witness (Rec., 301) tells us that he does not know anyone of Sy Quia's Filipino relatives, and yet, at page 303, we find the following questions and answers in his testimony:

"What Filipino children were those?

"They were his children, named Gregorio, and Pedro.

"Who else?

"No one else.

"Do you remember Juan?

"No.

"About how old were Pedro and Gregorio?

"Gregorio was more than 40 years old, I should judge.

"And Pedro?

"About 30 or more.

"How long had Sy Yoc Chai and Sy Yoc Ling

been living in Manila at the time of Sy Quian's death?

"About 7 or 8 years.

"Have you ever been at Sy Quian's house in Calle Jolo?

"Yes. I always saw him sitting outside of the door.

"With whom was he living there?

"With a Filipino woman and children.

"With whom was Sy Quian living in Calle Jaboneros?

"With the Filipino woman."

The witness Lim Pan Ling deviates from the other witnesses in the record as to the time that Sy Quia stayed in China the last time he went there. All the other witnesses heretofore testify that Sy Quia had remained some months, at the most one year. Lim Pan Ling testifies (Rec., 402), that he had lived with Sy Quia in Am Thau, China, and also (Rec., 414) says:

"How old were you the first time you went to China?

"I was ten years old. (He went, therefore, in 1862.)

"How long did you remain in China the first time you went there?

"A little over six years.

"And during all that time was Sy Quia also in China, in Am Thau?"

"Yes, sir." (Which would have made Sy Quia's stay in China from 1862 to 1865.)

He also tells us, at variance with all the other witnesses who testified in China, that Sy Bi Bo and Sy Bi Git went to Manila and that both had remained in Manila for some time (Rec., 413-414):

"Did you know if Sy Bi Bo and Sy Bi Git came at any time to Manila?

"Yes, sir, they did.

"Who came to Manila first: Sy Bi Bo, Sy Bi Git, or Yap Puan Niu?

"Sy Bi Bo came first.

"And who came next; Sy Bi Git or Yap Puan Niu?

"Sy Bi Git came before Yap Puan Niu did.

"When did Sy Bi Git come to Manila?

"When I came to Manila, Sy Bi Git was here already.

"How long did Sy Bi Bo remain in Manila.

"Only a year, a short time.

"How many times had Sy Bi Bo been in Manila?

"Only once.

"How long did Sy Bi Git remain in Manila?

"The time when I went to China, Sy Bi Git went also to China.

"You mean to say the second time you went to China?

"Yes sir.

"How many times did Sy Bi Git come to Manila?

"I know only of once; I do not know of any other."

Is it not strange that the witnesses in China who remember so well the times that Sy Quia went back and forth from China to Manila and the lapse of time that intervened between each trip, and also the time he stayed at every visit, should not only forget the fact that Sy Bi Bo and Sy Bi Git also went to Manila, but should even state positively (some of them) that they never did?

Witness Sy Hien, a brother of the deceased, on being asked to write the name of his brother Sy Quia, writes it with different characters from those given by the other witnesses. (See Pencil Exhibit No. 1, in connection with this witness's testimony, which is made part of this record.) In this connection we want to call attention to the following incident which happened at the time of this witness writing his brother's name. Sy Hien started to write the name of Sy Quia in compliance with the request of attorneys for the plaintiffs, and wrote it with the characters appearing in Pencil Exhibit No. 5, attached to the record. As soon as characters different from those previously written by other

witnesses in the case appeared on the paper, attorneys for plaintiffs made the motion, under pretext of having a more permanent record, that writing of the names be suspended until a Chinese pen and ink could be furnished to the witness. The defendants objected, not, as the court said, because they did not want permanency of the record, but because they knew that, already on his guard, the witness would change the characters when asked to write them again. Our suspicion was true. When pen and ink were furnished again, after a recess of twenty minutes, the witness was again asked to write the name of Sy Quia. This time, instead of using three characters, he uses only two, leaving the last one entirely out, thus conforming to the way of writing the name followed by all the rest of the witnesses in China and conforming also with the name appearing in the tablet No. 1. The legitimate deduction from this incident is too obvious to need comment. (See Rec., 432.)

We must add here that the first pencil exhibit is known as Plaintiffs' Exhibit No. 5, and the second is marked Plaintiffs' Exhibit No. 6.

From the testimony of this witness we learn also a very important and vital fact to the plaintiffs' case. Sy Hien, a brother of the deceased, tells us positively (Rec., 437), that there exists a family book in China wherein the dates of the birth, at least, of the different members of the family, are registered, and it is a logical surmise that, being a family book, all the important events of the family are registered therein.

"You have stated Sy Quia was older than you. Will you kindly state how much older he was than you?"

"Unless I see the book, I would be unable to tell the difference between Sy Quia and myself.

"To what book do you refer?"

"A book in the house in China."

If there is such a book, why is it that the plaintiffs have not presented it in evidence, when it would be much stronger than the testimony of the long string of 16 witnesses, who were called to testify to the different facts in this case, and were unable to state with precision and positively the dates on which these events took place, using only indefinite expressions, as heretofore remarked, and when pressed under cross-examination, have given up dates which strongly contradict plaintiffs' contention in regard to said dates? By the non-presentation of this book we are justified in believing and stating, under section 334, No. 5, of the Code of Procedure of the Philippine Islands, that, if the plaintiffs have not presented this book, which would speak for itself, it is because, if produced, its contents would be adverse to them. And it was plaintiffs' duty to account for the non-presentation of that book in order to overcome this presumption, which otherwise must stand strongly against all the rest of the evidence.

The plaintiff Sy Yoc Chai tells us (Rec., 476), as against all the rest of the witnesses, that the brother of his father is the father of Sy Yoc Ling, and that he believes "that his father (Sy Bi Bo) had two sisters, who died when they were small." Yet, all the rest of the witnesses are positive in saying that Sy Quia had only two children in China.

Attention is also invited to the following testimony of the plaintiff Sy Yoc Chai (Rec., 473-475):

"What is your name?

"Sy Yoc Chai.

"How old are you?

"Thirty-five years old.

"Where do you live?

"At No. 41 Calle Santo Cristo.

"Where were you born?

"I am a native of Am Thau.

"What is your occupation?

"Working in an alcohol distillery.

"What is your occupation at the present time?

"I am working with Sy Hien, and sometimes I go to the provinces.

"Are you one of the plaintiffs in this action against Petronila Encarnacion and others?

"My cousin is Sy Yoc Ling.

"But are you of the parties to this suit?

"Yes sir.

"Where did you live in Amoy?

"I lived at Am Thau in Amoy.

"Who lived with you in Am Thau?

"My uncle is Sy Ty and my grandfather is Sy Quii.

"Who else lived in the same house in Am Thau besides yourself.

"All my relatives.

"Who are your relatives?

"Sy Que Bieng was my relative.

"Name them all.

"Sy Quii, Sy Ty, Sy Tiap and Sy Hien. Sy Tiap died when a small boy.

"Where did your father and mother live?

"He was the son of Sy Quii.

"But where did your father and mother live?

"In China.

"But where in China?

"They lived in the house of my grandfather.

"Where did your cousin Sy Yoc Ling live?

"In the same house.

"Where did the parents of Sy Yoc Ling live?

"As the brother of my father, he lived in the same house.

"What was your father's name?

"Sy Bi Bo.

"What was your mother's name?

"Ho Gim Niu.

"Is your mother living or dead?

"My father died *four years ago*, and my mother is dead about eleven years ago.

"When did your father die?

"Sr. SUMULONG: The question has already been answered and I object to it on that ground.

"Mr. O'BRIEN: It was not responsive.

"The COURT: Objection overruled.

"Sr. SUMULONG: Exception.

"When my father died I was eleven years of age.
He died twenty-four years ago.

"Did you have any brothers or sisters?

"One sister.

"What was her name?

"Sy Jui Niu.

"Is she living or dead?

"She died in July.

"Previous to her death was she married or single?

"Married.

"When she died did she have any children?

"Yes, sir.

"How many?

"One son.

"What was his name?

"Siau Hau.

"How old is Siau Hau?

"Six years of age.

"Who was the father of Sy Bi Bo?

"I do not know because I am only a little over
thirty years of age, and I do not know.

"Who was the father of your father?

"Sr. SUMULONG: Objected to, on the ground that
the witness has already stated that he did not know.

"Mr. O'BRIEN: I will withdraw the last question.

"What is the name of your grandfather?

"Sr. SUMULONG: Objected to for the same reason.

"The COURT: It may be answered, although in a
certain way repetition, but at the same time it may be
for the purpose of correcting something the witness
misunderstood.

"Sr. SUMULONG: Exception.

"Sy Quii.

"Did your father have any brothers or sisters?

"He had a brother.

"What was his name?

"Sy Bi Git.

"Was Bi Git married or single?

"Married.

"To whom was he married?

"To Yap Su Niu.

"Did Sy Bi Git and Yap Su Niu have any children?"

"Yes sir.

"How many?"

"One son by the name of Sy Yoc Leng and a daughter by the name of Sy Chua Niu.

"Where is Sy Yoc Leng now?"

"He is here in Manila.

"Is he outside here in the other room?"

"Yes sir.

"Is he one of the parties to this suit?"

"Sy Yoc Leng is one of the plaintiffs; he is a relative of mine, just like a brother.

"Where is Sy Chua Niu?"

"Dead.

"How long has she been dead?"

"Less than twenty years, I cannot fix the time.

"Where is the mother of Sy Yoc Leng?"

"She is also dead.

"When did she die?"

"My uncle died when I was five or six years old, and then I went to my aunt's; my uncle died when I was four or five years old.

"Mr. BISHOP (attorney for the plaintiffs): I will ask permission of the court to procure a new interpreter, as it is very evident that this interpreter *does not give either the questions or the answers in the way they should be*, and I base this on my professional statement, and I am confident that this witness does not understand the questions that have been put to him.

"A recess of twenty minutes was taken, after which the plaintiff Sy Yoc Chai proceeded with his testimony."

And now let us notice a fact which every one of the witnesses has forgotten. Each and every one of them, even Sy Hien, the brother of the deceased, testify positively that Sy Bi Git only had two children: Sy Yoc Ling, the boy, and Sy Chua Niu, the girl. Yet when the plaintiffs produced the mortuary tablet of Sy Bi Git in connection with Sy Peng's

testimony, and introduced by plaintiffs in evidence, we find that that is subscribed as follows:

"Tablet of Mr. Sy Bi Git and his wife Mrs. Sy
Yap Sung Niu.
Filial Sons:
Yoc Ling
Yoc Boon."

Who is the "filial son" Yoc Boon? The tablet tells us that he is a son of Sy Bi Git, but none of the 16 witnesses, not even Yock Ling, the plaintiff, remembers the birth of this child, or even casually mentions his name. Even Lim Chio, that intimate friend of Yap Puan Niu, tells us (Rec., 194), that she does not know who this Yoc Boon is.

The foregoing is the analysis of plaintiffs' oral evidence in regard to the very important facts on which they pretend to base their claim. We submit that it is not *sufficient* to satisfy the mind of this court that Sy Quia was married to Yap Puan Niu in the year 1847, had two children by her, Sy Bi Bo and Sy Bi Git, born, respectively, in 1848 and 1849, and that Sy Yoc Chai is the adopted son of Sy Bi Bo and Yoc Ling the son of Sy Bi Git.

The Tablets.

Plaintiffs, however, will argue that if the oral evidence fails to support their case, yet they have introduced some documentary evidence, in the form of mortuary tablets, in connection with Sy Peng's testimony, and marked Plaintiffs' Exhibits Nos. 1, 2, and 3, and made part of this record (for a translation of these see Rec., 307-9), which prove their contention.

Let us examine and analyze these tablets and see if they support the plaintiffs' contention.

These tablets, being written in the Chinese language, wholly unknown to the court or to the defendants, had to be

translated by the Chinese interpreter of the United States Consulate at Amoy, China; a highly educated man, thoroughly acquainted and conversant with the Amoy dialect, versed in the law, a scholar, and otherwise fully qualified, as appears at pages 109-111 of the printed record.

According to this translation we find the following facts:

Tablet No. 1. That Sy Quia was born on the 4th day of the first Moon of the Kui Wie Year; that is to say, 84 years ago, and died on the 22d day of the 11th Moon of Sin Bau Year, which year we find to be the year 1893. That Sy Yap Si *alias* Puan Kien was born on the 12th day of the 3d Moon of the Ting Hai Year; that is to say, 80 years before, and died on the 3d day of the 12th Moon of the Kui Hsu Year; that is to say, in the year 1894.

Tablet No. 2. That Sy Bi Bo was born on the 17th day of the 7th moon of the Bo Chen year, 59 years from the year 1906, and died on the 23d day of the 7th moon of the Kui Hsu year, or the 19th year of Kuang Su; that is to say, the year 1894. And that Mrs. King Niu died at the age of 44, being born on the 4th day of the 2d moon of the Kian Suo year, that is to say, 57 years from the year 1906, and died on the 3d day of the 8th moon of the Jen Wu year; that is to say, in the year 1881.

Tablet No. 3. That Sy Bi Git died at the age of 32, was born on the 11th day of the 9th moon of the Chi Yu year, that is to say, 58 years from the year 1906, and died on the 21st day of the 7th moon of the Kian Chen year of Kuan Hsu; that is to say, 1879. That Mrs. Yap Sung died at the age of 32, having been born on the 15th day of the 10th moon of the Kui Chao year of Tao Kuang, or 54 years from the year 1906 back, and died on the 28th day of the 4th moon of the Kia Ching year of Kuang Hsu; that is to say, in the year 1884.

At a mere glance at these tablets we are surprised to see the neatness of the arrangement of tablet No. 3 as compared with the crowding of Chinese characters in tablets Nos. 1 and 2. But we shall refer to this later.

The interpreter's translation has been studied carefully. Upon making a computation of the different dates, defendants were astonished to find that either these tablets presented in evidence by the plaintiffs were not correct, or all the testimony given by the witnesses in China, as well as in Manila, in behalf of the plaintiffs, was contrary to the real facts, as shown by these tablets. By examining plaintiffs' Exhibit No. 1, we find that Sy Quia, who died on the 9th day of January, 1894, is killed by that tablet one or two years before, and that Yap Puan Niu, who, according to the oft-repeated testimony of plaintiffs and the majority of their witnesses (with the exception of Yap Chong, who testified she died in the year 1894), had died two or three years before Sy Quia, her alleged husband, has her life prolonged by said tablet for two or three years more after her death. In the same way we find in Plaintiffs' Exhibit No. 2 that Sy Bi Bo, who, according to the testimony of plaintiffs, died long before his father and mother, did not die, according to the tablet, until the year 1894, the same year of his mother's death, as given by tablet No. 1, and that his wife, King Niu, died long before he did, when the witnesses for plaintiffs testified that she died long after. Do not these flagrant contradictions give strong reason to doubt the genuineness of these tablets? If they are genuine, how can they be made to correspond and agree with the oral testimony? If the oral testimony, on the other hand, is correct, is it not clear that these tablets were made in haste and carelessly, to meet the demand for some written evidence to corroborate the weak and indefinite oral testimony? With the presentation of these tablets, the plaintiffs, instead of strengthening their case, have, on the contrary, thereby weakened, if not destroyed, it. What satisfactory explanation can be given for this discrepancy?

Plaintiffs claim that the interpreter's translation, assuming that it is, strictly speaking, correct as a translation, is incorrect as to the order of dates; in other words, that the in-

terpreter's translation assigns to Sy Quia the date of Yap Puan Niu's death and the date of Sy Quia's death to Yap Puan Niu; and that the same happened with the tablet of Sy Bi Bo; and that if these dates are transposed, they will then be found to correspond with the respective dates of the deaths of the different parties as established by the oral evidence. To support this contention plaintiffs allege that the 3d day of the 12th moon of the Kui Hsu year corresponds exactly with the 9th day of January, 1894, the date of Sy Quia's death, and that the ages of Sy Bi Bo and his wife explain by themselves that the dates of birth and death have been transposed. \

Their argument is specious. In the tablets, as they appear and read, the ages do not correspond to the respective dates of birth and death of the parties, and this shows that the tablets are not genuine. Moreover, the subsequent conduct of the plaintiffs practically admits that they are not to be relied upon.

For six years the case has been pending; for six years the defendants have alleged and asserted that these tablets showed on their face that they were not genuine; this allegation was made at the trial of the case and was not met by plaintiffs. The same allegation was made when the case was argued for the first time on appeal before the Supreme Court of the Philippine Islands; their genuineness was again contested by the defendants when the case was argued for the second and third times in the same Supreme Court, and only silence met their charge. They did not refer to the tablets incidentally even once. Only now, *for the first time*, before the Supreme Court of the United States, do they attempt an explanation. If the translation was mistaken, it was their duty to have so suggested to the trial court and to the Supreme Court of the Philippine Islands. It is too late now. It is to be noted that this translation is *plaintiffs'* evidence, although marked "Defendants' Exhibit A" (this being only due to the fact that it was offered by said defendants as part

of the cross-examination of the witness Sy Peng), and they have never attacked it, have never attempted to explain it heretofore, in spite of the fact that Yoe Ling and Yoe Chai both testified in the case and could have given that explanation. Yet not once throughout their testimony appears the slightest allusion to these tablets which are supposed to be signed and subscribed by them!

It is too late now to consider any hypothesis as to whether the dates were transposed.

The tablets explain and speak for themselves and the translation made of them by Li Ung Bing, acquiesced in by the plaintiffs, also speaks for itself. And it is because of this that the Philippine Supreme Court concluded that these tablets must have been made in a hurry in plaintiffs' eagerness to bring some documentary evidence to support their case. We cannot comprehend how a mistake could be made by the learned interpreter who testified for plaintiffs, not once, but twice, and not on the same tablet, but on two different ones. The basis of the present allegation of the plaintiffs as to the mistaken assignment of dates is that the date assigned to Yap Puan Niu's death corresponds exactly to the proved date of Sy Quia's death, to wit, the 9th day of January, 1894. There is nothing in the record that could support this contention. Where can we find in the record of the case that the 9th day of January, 1894, corresponds to the 3d day of the 12th moon of the Kui Hsu year? Nowhere; the record only tells us that the Kui Hsu year is the year 1894; but that is all. The dates of the Chinese calendar are not dates of which this court can take judicial cognizance, as no judicial cognizance can be taken in regard to foreign laws. It was the duty of the plaintiffs at the trial of the case to prove the corresponding dates as shown by the tablets and the translation to the dates of the Christian calendar. It is a question of fact susceptible of proof, not one to be established by mere argument of counsel.

Plaintiffs in their brief make the statement that on pages

650-651 of the record the court unqualifiedly declared the tablets inscribed by Sy Quia and Yap Puan Niu as fraudulent and fabricated because it appears from the translation made of the tablets by the interpreter Li Ung Bing that Sy Quia died in 1891, whereas he actually died in 1894. To support this statement as to the lack of foundation of the charge made by the court below, plaintiffs attempt to bring now to the record a comparative almanac issued by the Department of Commerce and Labor and published by the Government Printing Office in 1904, thus seeking to bring in the record as evidence something that must be proved like an ordinary fact and of which the court can take no judicial cognizance. We might protest against plaintiffs trying to prove by something extraneous to the record that the 9th day of January, 1894, corresponds exactly to the third day of the 12th moon of the Kuan Hsu year, but we are ready to meet them on their own ground. In the first place, this new piece of evidence brought in by plaintiffs only dates from the year 1849. Their argument to prove the correctness of the tablets as regards the date of the birth of Sy Quia is that the Kui Wie year, as given in this almanac, corresponds to the year 1883. They are correct in that, although they have not stated that the first day of the first moon of the Kui Wie corresponds to the 8th day of February of the year 1883. But where they are mistaken in their computation is as to when did the year Kui Wie occur before the year 1883. Their statement in their brief that it corresponded to the year 1882 is misleading and incorrect. If the year Kui Wie started on the 8th day of February, 1883, it could not have occurred in 1822, but in 1823. As a matter of fact, the 4th day of the first moon of the year Kui Wie corresponds to the 13th day of February, 1823. By reference to page 488 of the record, and also to Exhibit "AB," which is part of this record introduced in evidence by the plaintiffs, it will be seen that on the tombstone of Sy Quia there is the following inscription:

"Born in February, 1882."

We have here a discrepancy between the date of the birth of Sy Quia as given by the tablets offered in evidence by the plaintiffs and the date of his birth appearing in the inscription on the grave, introduced also in evidence by the plaintiffs. How can this discrepancy be explained except by the fact that the tablet must have been made simply by calculation and not according to facts? Plaintiffs try to explain that the interpreter has made a mistake in assigning the dates. Plaintiffs present an arrangement identical with that which appears in the tablets themselves, but that arrangement looks much neater as it appears printed in their brief than in does in the original Chinese, which is made part of this record. They give below each arrangement the corresponding date on the Gregorian calendar, and base their argument on the fact that it is proved that Sy Quia died on the 9th day of January, 1894, and therefore columns Nos. 1 and 4 of the arrangement corresponding to tablet No. 1 correspond to Sy Quia and the columns Nos. 2 and 3 correspond to Yap Puan Niu. This argument is specious, inasmuch as it brings in extraneous subject matter to prove the assignment of this date in the tablet. The tablet must speak for itself, as must the translation made of it by the interpreter Li Ung Bing. The tablet must be read as the interpreter read it, for what it says and the way it says it. Now, plaintiffs acknowledge and admit that the reading of the Chinese language is made vertically and from left to right. Without other explanations, it must be read in that order as we read one line after another in our own system of writing. Against the arrangement, therefore, given by the plaintiffs the defendants present the following arrangement:

| |
|--|
| Born Time of Jen 4th Day, 1st Moon, Kui Wie Year |
| Born Time of Jen 12th Day, 3rd Moon, Ting Hai Year |
| Deceased Grandfather Mr. Sy Tiong Quian. Deceased Grandmother Sy Yap Si, her virgin name Puan Kien |
| Died Time of Su 22nd Day, 11th Moon, Sin Bau Year |
| Died Time of Hai 3rd Day, 12th Moon, Kui Su Year |

| |
|--|
| Born 1823 |
| Born 1827 |
| Deceased grandfather etc. Deceased grandmother etc. |
| Died Dec. 22, 1891 |
| Died Jan. 9, 1894 |

This tablet, as it stands and as it reads, according to the arrangement above given, certainly does not in the least convey the idea that Sy Quia died on the 9th day of January, 1894, and Yap Puan Niu on the 22d day of December, 1891. The tablet, as it stands, reads conclusively that Sy Quia was born in 1823 and died in 1891, and Yap Puan Niu was born in 1827 and died in 1894; it is because

it reads so, and because it was proved that Sy Quia died on the 9th day of January, 1894, that the appellate court below concluded that the tablet was false and fraudulent: 1st, because it makes Sy Quia come to the world a year after he did and kills him three years before he actually died, and, 2d, because, though it may give the correct date of Yap Puan Niu's birth (this we do not know, because no witness has been able to give it with certainty), it makes her live three years more than the majority of their witnesses say she actually did live.

Let us now compare Sy Quia's and Yap Puan Niu's tablet with that of Sy Bi Bo's and Sy Bi Git's. It may be seen that the last two show location of the grave. The tablet of Sy Bi Bo gives the location of his grave. The tablet of Sy Bi Git gives the location of both his and the grave of Yap Sun Niu. Is it not rather peculiar that we find no trace of where Yap Puan Niu is buried, in a tablet which is supposed to perpetuate her memory and let her descendants know where her bones are resting? Let us compare this tablet again with tablet No. 3. Is it natural that a tablet intended to perpetuate Yap Puan Niu's and Sy Quia's memory should be written in the careless way in which it appears, on one face only, with the characters all confused and some of them overlapping, when, as it appears in tablet No. 3, it could have been written where Sy Bi Git's wife appears written, that is to say, on the back of the front slide, which is the logical and reasonable way of writing, and where no mistake can be made, and no explanations required outside of themselves, as to the dates of the birth and death of the respective parties? Again they will insist that no special standard has been given as to the way the tablets ought to be written; that, written as they are, and taken in connection with the evidence adduced by the witnesses, the fair interpretation of those tablets should be made to conform to that testimony. We are also ready to meet them on this ground. Let us refer to the testimony of Yap Chong, al-

ready quoted at page 37 of this brief, where, pressed to give a definite fact from which the date of Yap Puan Niu's death could be established to a certainty, he has given us her death as occurring in the year 1894, thus supporting and bearing the date given in the tablet. And he is a *relative* of Yap Puan Niu, and the others are not. What we have shown as regards Sy Quia's tablet, is also true as regards Sy Bi Bo's. There we have also the same crowding of characters as in tablet No. 1, with the same mistake committed if we are to read the tablet as it stands alone, without outside explanations. Let us read this tablet No. 2 as it stands. It reads that Sy Bi Bo was born in 1848, and died in 1893, and Ho Gim Niu was born in 1850 and died in 1882, thus corroborating the translation made by the interpreter, who read it as it reads and not as plaintiffs' attorneys claim that it should be read. Plaintiffs will say that tablet No. 3 conforms to the facts and therefore that the court was not justified in pronouncing that tablet false. We reply that they have either to admit that the tablet is correct, and the testimony of the witnesses incorrect, or *vice versa*. All the witnesses for the plaintiffs have stated that Si Bi Git and Yap Sun Niu only had two children, Sy Yoe Ling and Sy Chiao Niu, and tablet No. 3 tells us that Sy Bi Git had another child whom nobody has accounted for, even his own alleged brother, Yoe Ling. We also invite this court to look at the characters written by the Chinese witnesses at pages 74-A, 74-B, 74-C, 339 and 379 of the original transcript of the depositions taken in China and made part of this record; also to the names Yoe Ling, appearing in Chinese characters in tablet No. 1, and in the translation of that tablet made by the Chinese interpreter Li Ung Bing. Compare these characters with the characters reading Yoe Ling in tablet No. 3, and in the translation of that tablet made by the Chinese interpreter, Li Ung Bing, and also at page 330 of the original transcript of the depositions taken in China and made part of this record, and it will be seen that *those characters do not cor-*

respond. It may be argued that they read the same; that both read Sy Yoc Ling, and that therefore they mean the same person. To this we answer with the following extracts from the original transcript of depositions taken in China (pp. 341, 347, 351, 352).

Witness Sy Boan (page 350):

"Can you write the name Sy Yoc Ling with different characters from those you have written at the top of page 339?

"Yes, Ling is a different character.

"Will you please write with that different character?

The witness writes:

Again at pp. 351-352:

"What is the correct way of writing these different names in Chinese characters? As you wrote them first or as you wrote them the second time when you were instructed to use other characters?

"The names I have written the first time.

"Is it not true that although you have used different characters the second time, those characters represented the same names and persons?

"They would denote the same persons *but pronunciation only*. I mean where the characters are different.

Page 246:

"Are you sure that the Chinese characters you have written here this morning on pages 336-337-338 & 339 are the faithful and correct expressions of the names of the parties which you have referred to?

"They are."

Page 347:

"Can (those names) be represented also by other characters than those you have written this morning in the aforesaid pages?

"But those names as I have written this morning

are the correct names in Chinese characters of the parties referred to. In China a man's name may be represented by different characters having the same pronunciation, but the characters I have written are the correct ones for their names."

Let us finally turn again to page 351:

"* * * But to write a man's name correctly we must give it in such characters as will be recognized by his wife, his sons, his grandsons and relations."

Is it logical that in a secreted tablet, in a tablet to perpetuate the memory of the different members of the family, the name of one of the parties who are supposed to have signed it (nothing appearing to the contrary), should be written with a different character, a character with which the witnesses for the plaintiffs themselves tell us they designate the person only by pronunciation, that is to say, phonetically, but not in the way it should be known to his wife, children, grandchildren and relations?

Does not this cast suspicion on this tablet, or on tablet No. 1, the more so when it appears coupled with another name which nobody has been able to account for, to wit, the name of Yoc Boon?

What explanation can we find in the record itself of all these contradictions? What explanations have plaintiffs given in regard to them? Clearly the findings of the appellate court below as to the fabrication of the tablets is justified.

Before leaving the subject of these tablets, we desire to call attention to certain following parts of the testimony of Li Ung Bing and Sy Pong.

The examination of Li Ung Bing (Rec., 113) reads:

"Where are the tablets kept? And by whom prepared?

"They are kept in the family temple, and pre-

pared by the descendants, in the presence of all relatives and friends of the family *immediately after the death of a parent.*

"Where is the grave record kept and by whom prepared?"

"The grave record is kept inside of the grave, and is prepared by a man of high social standing, chosen by the family for the purpose in the presence of friends and relatives of the family; this record may be written or engraved on some stone which is buried beneath the coffin in the grave.

"If a person dies out of China, when is the grave record made?"

"No record is made in China *at all* if a man dies out of China."

If, according to this witness, the tablets are made *immediately after the death of a parent*, how is it that in spite of the long lapse of time between the deaths of each of the parents, they appear in the same tablet and, which is still more remarkable, on the same face of such tablet? And this is the testimony of Li Ung Bing, the law expert, called by the plaintiffs, on direct examination.

This same witness testified (Rec., 116) that he did not believe the head of a family in China would permit such tablets as these which are kept in the family temple to be taken out of China, such tablets and grave records *being regarded as sacred in China.*

Neither do we, since, according to this witness, there are family records (Rec., 112), that bear evidence of the marriage, which the plaintiffs could have presented without running the risk of committing a sacrilege.

Witness Sy Peng, pages 167-174-178-179-180:

"Did you see when these tablets, Plaintiffs' Exhibits 1, 2 and 3, were made after the death of the respective persons mentioned therein?"

"I did not see the preparation of these tablets.

"When did you see them for the first time?"

"Several weeks ago, when Yoc Ling invited me to see them before they were taken out of the shrine.

"These Tablets have been made according to the custom in China, have they not?"

"Yes. On the day of the funeral the tablet is put in a special chair and took part in the funeral procession, nothing was in this tablet, I mind you, but when the coffin was ready to be entered a man is asked to put a dot on the tablet. After this, a day is chosen when the name, location of the grave, and so forth, is written on it; this is the custom prevailing here.

* * * * *

"In your cross-examination as appears upon p. 116 of this record, you were asked 'When did you see them for the first time,' indicating or referring to the 3 tablets marked Plaintiffs' Exhibits 1, 2, and 3, to which you answered, 'Several weeks ago, when Yoc Ling invited me to see them before they were taken out of the shrine,' do you wish to make any change or correction to that answer, if so state what."

The question was objected to as decidedly leading, and also on the ground that corrections of this kind, to be valid, must be spontaneous; whereupon the question was withdrawn without being interpreted to the witness.

"When did you see these three tablets for the first time? That is, Plaintiffs' Exhibits 1, 2 and 3.

"At the time the funeral took place after the deaths of the respective parties therein referred to. Some of these tablets are more than twenty years old, and some more than ten.

"In view of this answer and your answers in direct examination what have you to say about your answer to the question 'when did you see them for the first time,' and your answer thereto 'Several weeks ago'—appearing upon page 116 of this record."

Defendants again objected to the question on the ground that the record speaks for itself.

"Witness answers: In answering that question in cross-examination yesterday, *I meant the first time*

I saw them, immediately prior to their transportation, which was several weeks ago.

"Why is it that when we asked you yesterday when you had seen the tablets first, you told us that it was a few weeks ago only.

"I thought you meant when I saw them the first time prior to their being taken down here.

"You stated yesterday that at the time of carrying the body to be buried the tablets go behind the coffin, and that once at the grave the tablets are marked, is not that so?

"Yes. After that when the letters were written on it.

"You said that you had not seen the tablets being written upon, is it not?

"Yes. I was not there when they were written on. *The custom is they are to be written on three or four days after the day they are marked; this day must be a specially chosen day, good and lucky day, I mean.*

"If the tablets had not been written upon, how could you say whose tablet it was, I mean yourself, how could you, yourself?

"I can identify the tablets as the ones I saw in the funeral procession.

"By what means?

"I saw these tablets at the funerals; then when they were to be taken down to Amoy, for the purpose they are here for, Yoc Ling asked me to go and help him take them out of the shrine.

"Then the second time you saw these tablets was about 20 years after the funeral, when they were not yet written upon, and in fact the first time that you read the tablets and found out whose tablets they were, was only a few weeks ago, when, at the invitation of Sy Yoc Ling you went to take them out from the shrine to be brought down here to Amoy, is not that correct?"

"Yes. Yoc Ling invited me to go there at the time these tablets were to be taken out of the shrine because it was a very important family affair and he wanted me to be the witness, just the same as if he were going to transfer some real estate, on which

occasion I, as an elder, am always required to be present.

"Have you read the tablets, Plaintiffs' Exhibits 1, 2 and 3, before taking them out to be brought down here and before testifying in this case?"

"Yes, I have. *On the anniversaries of the days of death of the persons therein referred to I have been invited to dinner, and I saw and read them on such days.*"

If, according to Li Ung Bing no record is made at all when a person dies out of China and if, according to the witness Sy Peng, the tablet takes part in the funeral procession and accompanies the coffin and is marked at the time of the burial, how could Sy Quia have any tablet? How could this tablet have accompanied the funeral procession of Sy Quia if he died in Manila? And how could Sy Peng have seen that tablet at the funeral?

Has Sy Peng given a satisfactory explanation as to the means that served him to identify these tablets as the very ones he saw at the funeral when there was nothing written on them?

We also invite attention to an incident which appears at page 163 of the printed record.

And now we leave the tablets to the oblivion they deserve, confident that their *ex post facto* nature has been shown beyond a doubt.

DEFENDANTS' EVIDENCE.

Under statement No. 1, *ante*, plaintiffs allege that the man Sy Quia, to whom plaintiffs' witnesses refer, is not the same one who was later known as Vicente Romero Sy Quia. The name, as pronounced, did not correspond to the name by which Sy Quia was known and called in Manila. The name as pronounced and given by the Chinese witnesses who testified both in China and in Manila, with the exception of the witness Sy Hien, had a distinct nasal sound which the name of Sy Quia never had (Rec., 129). It will be seen that plaintiffs agreed that the name of Sy Quia, as pronounced by the Chinese witnesses, should be given a different spelling. We would not have insisted further, but for the fact that later on, and while the depositions were being taken, the witness Sy Boan, when asked if he knew Sy Quia, answered that he never heard that name before, and on being asked if he knew the man *Sy Quian*, answered: "Yes; Sy Quian I know" (Rec., 260). But the most important fact on which we rely for this contention is the one we have mentioned at page 40 *ante*. Plaintiffs were fully aware of the great difference between the sound of the name as given by witnesses for the plaintiffs, and the name of Sy Quia, when they tried to identify this person by the way in which the name was written. For this, they asked several witnesses to write the name of the man to whom they referred in Chinese characters, and then had the witnesses testify to the fact that the man who was represented by those characters was the same man who later on was known in Manila as Vicente Romero Sy Quia.

So far as the witnesses who testified in China are concerned, this manner of identification ran very smoothly, but when Sy Hien, the brother of Sy Quia, was put upon the stand to write the latter's name, pursuant to this manner of identification, he gave three Chinese characters, that read "Sy Quia," as against the other two which the other witnesses

wrote. We have before commented upon this incident on page 40 of this brief, and therefore we only confine ourselves now to refer to it in support of our contentions.

Sy Quia Was in Vigan and Not in China in the Years 1847-50.

To show that Sy Quia was not in China in the year 1847, as alleged by plaintiffs, defendants introduced the testimony of Mr. Remigio Tongson, who testified as follows (Rec., 313-314):

"Did you know Don Vicente Romero Sy Quia?

"Yes, I knew him; being little more than a child.

"How old was D. Vicente Romero Sy Quia when you knew him for the first time?

"Approximately thirteen or fourteen years.

"How much time elapsed from the time that you knew D. Vicente Romero Sy Quia for the first time until he was married?

"From the year 39 or 40 until 53 when he married and I continued dealing with him after he was married until his death.

"Can you tell us where he was residing or rather where D. Vicente Romero Sy Quia was residing during this period of time?

"I knew him in Manila and he came to Vigan before he married.

"How long was Mr. Sy Quia residing in Vigan before he married?

"I don't know exactly, but in the year 1847 when I was married to my first wife, Mr. Sy Quia was already in Vigan.

"In that year 1847, what idea was had here in Vigan of Mr. Sy Quia in relation to his civil status?

"He was single."

Our adversaries seek to discredit this witness only because he is not able arbitrarily to state accurately Sy Quia's age in the year 1847. But he fixes the date of the arrival of Sy Quia in Vigan, P. I., as 1847 by the circumstance that he, the witness, married his first wife in that year.

The next witness, Estefania Crisologo tells us (Rec., 321), the following:

"Did you know D. Vicente Romero Sy Quia?

"Yes, I knew him.

"In what year did you know him for the first time and why?

"I knew him because in those days we got clothes from them to sell on commission.

"Who are 'them' that you refer to and from whom did you get clothes to sell on commission.

"Them; the Chinese, because they are many who live in the same house.

"Among those Chinese was Sy Quia?

"Yes, sir.

"In what year did you know him for the first time, more or less?

"About the year 1848 when he was in Vigan.

"What was the civil status and the age of D. Vicente Romero Sy Quia when you knew him for the first time.

"He was single, and appeared to be about 26 years or 27 years old, more or less."

In their criticism of this witness' testimony plaintiffs do not allege anything that will discredit her. They tried to point out a false statement by the witness as to the 5,000 pesos which she testifies Petronila Encarnacion's mother gave her when she and Sy Quia went to Manila, but in regard to this statement we will apply to this witness also the remarks we shall further on make, when we come to discuss the testimony of Silveria Damian, another witness for the defendants, page 67 of this brief.

The witness Alejandra Singson testifies (Rec., 326):

"How long before her marriage with Mr. Sy Quia did you know the said Sy Quia?

"Some seven years.

"Where did D. Vicente Romero Sy Quia reside during the time that intervened between the date that she knew him until he got married to Da. Petronila Encarnacion?

"He lived in the house of Lavin and Da. Benita Encarnacion here in Vigan."

Our adversaries seek to discredit this witness for her inability to compute the exact age of Sy Quia when she knew him. We reply that a mistake of one or two years in this particular is not so serious as to discredit a witness's testimony. On the contrary, we think it is but natural that she should have made that mistake. The fact still remains that Sy Quia was in Vigan about 1847 or 1848.

The witness Silveria Damian testifies (Rec., 342):

"Did you know D. Vicente Romero Sy Quia?

"Yes, sir. I knew him.

"What year did you know him?

"When Sy Quia arrived here I think it was the year '48, more or less.

"How did you come to know Mr. Sy Quia?

"Because my husband first arrived in Vigan and Sy Quia stopped in our house here when he arrived in Vigan, because my husband and Sy Quia are countrymen."

Under cross-examination she testifies (Rec., 344):

"How long did your husband live in Vigan before you got married?

"More than five or six years, approximately.

"How long, more or less, did your husband live in Vigan before Sy Quia came here?

"Two years only."

In addition to much minor dissection of this witness, plaintiffs also attack her as having stated that she saw the delivery to Dona Petronila Encarnacion by the latter's mother of five thousand pesos at the time of the marriage, and as a marriage portion. The witness does not state any such thing. She states (Rec., 344-5) that Petronila Encarnacion received from her mother 5,000 pesos when she went to Manila, married to Sy Quia. She never said that

Petronila received this money at the time of the marriage and as a marriage portion. To contradict her statement our opponent's brief quotes pages 47, 51, and 81 of the record, where it is stated that Petronila Encarnacion inherited from her mother the sum of 5,000 pesos. This does not contradict the witness in the least. Petronila Encarnacion could have received those 5,000 pesos from her mother at the time Silveria Damian says she received them, and at the same time the same could correspond to the share of inheritance from her mother assigned to her in the partition of her mother's estate.

Notwithstanding the attempts of plaintiffs to discredit our witnesses, we submit that their testimony satisfies any impartial mind that in the year 1847 Sy Quia was in Vigan and not in China, so that it could not be possible for him to be married in China in that year.

The testimony of these witnesses (Rec., 313-345) proves also fact "A" appearing under statement of facts No. 2 *ante*, which has also been admitted generally by plaintiffs, although they allege that there has been an interruption in Sy Quia's residence in Manila during that time.

As regards fact "B" under statement of facts No. 2, *ante*, it is not only proved by the oral testimony of the defendants' witnesses, but also by exhibit No. 1 of the defendants, which is the entry of the baptism of the Chinaman, Vicente Romero Sy Quia (Rec., 13), and the authenticity of which has been admitted by plaintiffs by stipulation (Rec., 33).

Fact "C" of statement of facts No. 2 of the defendants, *ante*, has been proved not only by the testimony of the witnesses of the defendants, but by the testimony of the witness Sy Hien, a brother of Sy Quia, who testifies as follows (Rec., 430):

"What relationship existed between Sy Quia and the said Petronila Encarnacion?

"She was his *legitimate wife, married to him, and he had children by her.*"

Attention is also invited to the entry of the marriage of Vicente Ruperto Romero Sy Quia with Dona Petronila Encarnacion, marked Defendants' Exhibit No. 2 (Rec., 14), the authenticity of which has been admitted by plaintiffs by stipulation (Rec., 35).

Fact "D" of statement of facts No. 2 of the defendants, *ante*, is not only proved by all the witnesses for defendants and by some of the documentary evidence also introduced by them, but is also admitted by plaintiffs.

Statement of facts No. 7 of the defendants, *ante*, has been duly proved by their exhibit No. 8 (Rec., 18-20, 80-86).

In support of statement of facts No. 8, the defendants' witness, Remigio Tongson (Rec., 314), testified that before Sy Quia married Dona Petronila Encarnacion he was not rich, but only had an ordinary living; that when he came to Vigan he was only a trafficker, with a small amount of effects, and could not have been rich.

Estefania Crisologo testified (Rec., 322-3) that Sy Quia's occupation when she first knew him in Vigan was selling clothes to the mestizos there, and that he had no store there, being only an agent of his uncle, D. Jose Gloria Lecaros; that she knew Petronila Encarnacion's mother gave her, Petronila, five thousand pesos when she and Sy Quia went to Manila, and witness knew it because Da. Bittang, Petronila Encarnacion's mother, told witness and Sy Quia told witness also, because they frequented her (witness's) house, being friends.

The witness Alejandra Singson (Rec., 327) testified that Sy Quia, when she first knew him, was only an agent, who received a salary of two hundred pesos a year; that he had no store, and worked as an agent of Gloria Lecaros, and she knew it because the latter had told her so.

Another witness, Silveria Damian (Rec., 342-343), testified that at the time Sy Quia married Petronila Encarnacion, he, Sy Quia, was an employee of Gloria Lecaros, as were also the witness and her husband, and that Sy Quia

and witness' husband were both employed at the salary of two hundred pesos a year; that Petronila Encarnacion received five thousand pesos from her mother after she married Sy Quia, when she and Sy Quia went to Manila, said money to be used as capital; that she knows this because she, the witness, saw the delivery of this money to Petronila Encarnacion when they were about to leave for Manila.

Was Sy Quia Single When he Married Petronila Encarnacion?

The plaintiffs, to prove the marriage alleged by them between Vicente Romero Sy Quia and Yap Puan Niu, introduced several witnesses, among them being a man by the name of Li Ung Bing, who, in describing the marriage ceremony in China, testified as follows (Rec., 112):

"To begin with, the laws of China are all negative: the equivalent of legal marriage, as used in the statutes of China, is a phrase consisting of four characters, viz, 'Min meu chen ch'u,' literally meaning, 'Publicly, mediated and rightly married.' In China, the boy and the girl, irrespective of their ages, are not competent to marry themselves, they must be married by a competent authority of their respective families, in other words, the heads of such families, and all arrangements must be made through certain mediators; the business of the mediator is to give the history, circumstances and wishes of the families to one another; also to arrange about the presents to be given by the futura groom to the bride and to see that the *marriage letters are properly exchanged* between the heads of the two families. When the presents are made and accepted and the *marriage letters exchanged, the tie is considered to have been made under the law, so to speak * * **"

And again (Rec., 118):

"Q. You have referred to the marriage letters crossed between the two families, would you kindly

tell us what those letters usually contain and by whom are signed, and if the law regarding the same is written or unwritten? A. *The law makes reference to such letters*, but does not prescribe the form. This is a very ancient custom dating back to more than 3,000 years ago, and the forms have been varied at different times and are different in different places in China. At the present time, however, the principal features are the same. It contains that the competent authority of one family, or the head, is willing to betroth the son or daughter to the other family to be the husband or the wife of the son or daughter of the other family, as the case may be, giving the names of the parties and their respective ages. As a rule, such letters are couched in the most humble phrases one can find in the Chinese language."

From the above we may deduce that one of the essential elements of the celebration of the Chinese marriage is the interchange or crossing of the marriage letters. The plaintiffs, to prove the alleged marriage, have presented several witnesses who, among other things more or less relevant, testify to having attended the marriage ceremony, but they have not produced before the court the marriage letters which should have been exchanged by the families of Sy Quia and Yap Puan Niu, because, in accordance with the testimony of Li Ung Bing, above quoted, the law considers the marriage as having been contracted only when that exchange of letters has taken place.

That in China marriage certificates are the best evidence of marriage and are preserved is corroborated by the testimony of the witness Sy Hien, who testifies (Rec., 427):

"Are you married?

"Yes sir.

"Where were you married?

"In China.

"Where are your marriage certificates?

"I have always left them in my *pueblo*."

There is no proof in the record on the part of plaintiffs tending to show that the marriage letters were destroyed, lost or mislaid, and, therefore, the law does not excuse them from the obligation of producing same as the best evidence of the marriage. The non-production of said letters carried with it necessarily either the logical consequence that they have never existed and that therefore the bond was never had in law, or the presumption "*juris tantum*" established in No. 5 of article 334 of the Code of Civil Procedure now in force, which says:

"ART. 334. Disputable Presumptions. The following presumptions are satisfactory, if not contradicted; they are disputable and may be contradicted by other evidence: (5) that evidence willfully suppressed would be adverse if produced."

It is not sufficient, then, in accordance with the presumption "*juris tantum*" which we have just quoted, that in proving the existence of a marriage the testimony of witnesses who say they have been present at the marriage ceremony be alone introduced, if the laws of China, where the marriage is alleged to have been celebrated, requires that there be a written contract, to wit, the marriage letters, as testified to by the witness Li Ung Bing, the exchange of which, together with the giving of presents, are necessary to give validity to the marriage as a *legal one under the law*.

The following authorities confirm or corroborate what we contend:

"Jewish Marriage. In *Horn vs. Noel*, 1 Campb., 31; *Moss vs Smith*, 1 M. & G., 228; E. C. L., 425, it was held that the Jewish marriage consisted of both a written contract and the ceremony at the synagogue, and could not be established by the testimony of witnesses to the ceremony, as the contract and the signature must be proved."

The exchange of the marriage letters between the two families having once taken place would, according to the

witness Li Ung Bing, constitute the marriage as perfected, and is the only competent evidence to justify the allegation of the alleged marriage. Article 285 of the Code of Civil Procedure states:

"When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms and, therefore, there can be between the parties and their representatives and successors in interest, no evidence of the terms of agreement other than the contents of the writing."

If plaintiffs urge that the witness Li Ung Bing, in answer to the question as to what would be the effect of the tablets and funeral inscriptions of the family if the marriage letters, the list of presents and the rest were lost, stated that said tablets, once identified, would constitute complete evidence, we answer that no evidence has been introduced tending to show the loss or destruction of the marriage letters. And we have already fully dealt with the question of the genuineness of the tablets and inscriptions.

It is on its face highly improbable that a woman who was really the wife should be in the Philippines, as Yap Puan Niu was (according to the testimony of the witnesses of the plaintiff), abandoned by her husband, who did not live with her, and who, on the other hand, was publicly living with Doña Petronila Encarnacion, and that Yap Puan Niu, during the entire time she was in Manila and during her whole life, did not insist upon enforcing her alleged marital rights nor those of her children. We cannot understand, either, his alleged children, Sy Bi Bo and Sy Bi Git, should allow all their lives to pass, seeing themselves shut out of their own rights by other children, without even saying a single word in their own behalf. Under the marriage law in force in the Philippine Islands, when Sy Quia contracted canonical marriage with Doña Petronila Encarnacion, he was a pagan when he married in China, and on becoming a Christian could only

break his matrimonial bond contracted in accordance with his former religion if the spouse who remained pagan did not want to live with him or should refuse to enter into his own belief. Following is how the 3d law, title 10, 4th Partida, states this:

"Contumelia creatoris, which is equivalent to 'offense to God' and to our faith, is like spiritual fornication, because it may happen that divorce might take place between some who were married, and this would be as if some of us who were Moors or Jews, or being already married according to their law, some of them become Christians and the other wishing to remain in his religion do not desire to live with him, or if he should desire so to live, should insult God many times before him and also our faith, or should deny him every day trying to make him live the Christian faith and return to that which he had abandoned: and for any one of these three reasons, the Christian man and Christian woman can abandon the other without asking permission of anybody and he may marry another woman or man, if it is so desired, but before doing this, that is to say, before leaving her or him, he or she shall call good men and complain to them that the impediment he has and the reason why he or she wants to leave the other, and it will be necessary that those persons who shall be called for this, shall hear them and be sure that one of these reasons exists, so as to be able to use them as witnesses, if necessary."

The following law, that is to say, law 4, title 10, Partida 4, provides as follows:

"Iniciatum, ratum, consumatum, means that which has a beginning, continuance and end, and these three things exist in the marriage which is made rightly between Christians, and they do not exist in the other marriages made according to other laws, because in the other marriages which those who are non-Christians celebrate between themselves, have only two of these three things, viz: the beginning and the end, but not the second one which is firmness,

and for this reason there is a difference between marriages celebrated among Christians and those of non-Christians, because according to Holy Church marriage, can never be set aside, when it is rightly made, although there be a separation, but always exists during the lives of those who contract it, and none of the parties to this contract can marry again while the other is living. But in other marriages which are made according to other laws they can be, either by repudiated libel or from any of the other reasons laid down in previous laws, so that one, during the life of the other, may marry."

On August 31, 1839, the Governor General of the Philippine Islands issued a decree referring to the Chinamen in the Philippine Islands, articles 18 and 19 of which read as follows:

"ART. 18. Every Chinaman who shall desire to marry a native or mestizo woman, must come to the Governor with his baptismal certificate, that of his future wife, the consent of her parents or elders, the certificate of having been enrolled as a Christian and the certificate of the parish priest, which shall certify to his having been instructed in the Christian doctrine.

"ART. 19. Upon presentation of these requirements, a license will be given to him with all the provisions made for these cases by the decree of this superiority of July 6, 1827."

After reading all these laws and referring to the canonical laws and procedure governing the celebration of marriages in the Philippine Islands at the time that Sy Quia married Petronila Encarnacion, as given by the witness Juan Sanchez (Rec., 561, 566), which were in force in the Philippines until General Order No. 58 of the Military Government of the United States in the Philippine Islands was issued, and taking into consideration the corroborated testimony of the witness Roman Gray (Rec., 316), who saw the record of the investigation made in accordance with the provision of the last-

named laws, we must perforce come to the conclusion that either Sy Quia was single or he had obtained in accordance with the law a divorce which allowed him to contract a new Christian marriage.

We have seen already how by the decrees of the supreme government of these islands, dated July 6, 1827, and December 20, 1849, a Chinaman who wanted to contract marriage with a Filipino woman was required to have a license from the government, which was given to him after careful investigation, and not very easily; and if it is a presumption of law that public officials properly comply with their duties, and that the provisions of law have been complied with, and that the ordinary course of proceeding has been followed (sec. 334 of the Code of Civil Procedure), we have but to conclude that when the Governor General gave him permission to marry with a Filipino woman, Doña Petronila Encarnacion, it was either because it was well ascertained that he was single or because he showed, in accordance with the laws of Partida which we have just copied, that he was within one of the cases which, in accordance therewith, a marriage bond contracted while he was an infidel had been dissolved.

But there are some points in the record which confirm the first supposition, that is to say, that he was single, because we learn as well from the witnesses for the plaintiffs as by those of the defendants, that Sy Quia came to the Philippine Islands when he was a child 12 years old (see testimony of Sy Peng (Rec., 127) and Remigio Tongson (Rec., 312); that he spent his youth in Manila, that, being already domiciled in Vigan before the year 1847, he enjoyed there the public reputation of being single (Rec., 312-329, 333-346); that he continued in that status until he received holy baptism in 1862, and that he contracted marriage in 1853. Remigio Tongson (Rec., 312) states the following:

"Q. How long before Sy Quia was married had Sy Quia been residing in Vigan?

"A. I do not know exactly, but in the year 1847 when I married my first wife, Sy Quia was already in Vigan."

This witness knew Sy Quia in Manila when Sy Quia was 12 years old and the reason he gives for knowing the fact of Sy Quia having been in Vigan in the year 1847, which we have just quoted, is one of those which convinces the mind of the most impartial judge of its truth, because it is certain that a witness would remember the year he married his first wife, and remembering that day, he can fix that on which Sy Quia established himself in Vigan.

From the testimony of Roman Gray (Rec., 316), a clerk in the parish church of Vigan, we learn that in the canonical record of single freemen, which was made before Sy Quia's marriage, Sy Quia stated under oath that he was single in the year 1853. This data, we say, makes it more positive and probable that he was single than that he should have obtained the divorce mentioned in laws 3 and 4, title 10, Partida 4, above quoted. With what intention, then, could he have stated that he was single, if it were not with the intention to obtain authority to contract the marriage he desired with a Filipino woman? If the law then in force would have prevented him completely from contracting a marriage with a Filipino woman, then we may understand why he might have lied when he made that statement, but having other legal means of dissolving the bond which he contracted while he was an infidel, and when his wife did not reside with him, we see no reason why he should have lied; nor do we understand his good fortune in keeping on through life without anybody discovering it, during the long lapse of time in which he was known by the residents of Vigan. And this probably comes out most forcibly, if we take into account that, not only by the civil laws which we have quoted, but also by the canonical laws, he could, had he been married while he was an infidel, have obtained

a dispensation which would have enabled him to contract the marriage he did contract with Petronila Encarnacion.

It has been seen that by the civil laws of Partida he could have obtained the license which the decrees of the Superior Government above cited required, without having recourse to calling himself a single man, if he had in fact been previously married in China. Let us look now into the fact that he had no reason to lie in order to secure from the ecclesiastical authorities permission to contract another marriage, which could at that time be validly contracted in the Philippine Islands, and to which he aspired.

Father Francisco Gainza, in his work "Faculties of Bishops Beyond the Sea," speaking of the 11th Solita: "*Dispensandi cum gentilibus, et infidelibus plures uxores habentibus ut post conversionem, et baptismum, quam ex illis maluerint, si etiam ipsa fidelis fiat, retinere possint, nisi prima voluerit converti,*" states the following at page 90 of the second edition of his work:

"We have here many infidel Chinese married in their own country and once having taken residence in this country, wish to embrace Christian faith and do in fact embrace it, but they are those of whom Benedict XIV says that they baptize in order to contract marriage *sine quo fortasse non sumerent*. Many of them may be ignorant of whether their wives live, or at least where they reside. If one to be baptized is not allowed to marry here, they are exposed to a great many offenses to God as is, unfortunately, evident. If they are compelled to return to their country, besides the fact that they might be prejudiced in their commercial interests, which would be sufficient for none of them to embrace the Christian faith, they would be put in imminent danger to fall again into the idolatry to which they so tenaciously cling. If a judicial interpolation is to be made and the result thereof awaited, it is not a very simple thing, either because of the difficulty of making it reach the hands of his wife in such a Babylon as China is, or for the reason that it is also difficult

to find a person to make the judicial intimation and to certify that the interpolated woman does not want to be baptized, nor even live with her husband *absque injuria Creatoris*; and finally, when we know by experience that the women very rarely immigrate from China to these Islands, through the ill-founded fear that they may be compelled to embrace Christian faith, but also not even to the English or Dutch Colonies, nor even to the infidel countries, such as Jolo, Borneo, etc., where they desire them so much and where they could live with such unbounded liberty.

"Well, then, to obviate all these difficulties, which are not small or imaginary, we have the Bull of Gregory XIII, *Populis ac Nationibus*, of January 25, 1585, in which His Holiness, speaking of the negroes of Ethiopia, Angola, Brazil and other regions of the Indies, which were bought or made captives, being married in their own country and transported to other points in America, where, after a time, they wanted to become Christians and marry Christian women, he says, it is convenient to be indulgent with the liberty to contract marriage in order that some men who are in no way used to keep concubines, shall continue for that reason with lustful pleasure in the faith, and others, by their example, may not be restrained from embracing it, because many times it happens that many are transported from their native country and separated from their own spouses, to remote countries, so that the captives themselves, as well as those who remain in their country, be afterwards converted to the faith cannot interrogate (as must be done) those infidel spouses separated by such great distances from the localities, to see whether they want to cohabit with them without offense to the Creator, either because sometimes there is no way of making the news reach to nations and provinces which are hostile and enemies, or because they are ignorant as to what countries they have been taken, or on account of the distance, there is great difficulty—with fear for the present and with apostolic authority, we grant complete faculty to all the bishops of certain localities and to the parish

priests—to dispensate all the faithful of Christ of both sexes who live in those countries and to the slaves converted to the faith who have contracted marriage before having received baptism, that any one of them may leave his infidel wife or husband and without his or her consent and without waiting for the answer, contract marriage with any Christian, but that it may, on the other hand be done according to the rites of the Church and solemnized in *facie Ecclesiae*, and that they remain licitly in that marriage while they live, that marriage having been once consummated by sexual intercourse.

“Here we have the following doctrine, that in the cases comprised in the Bull, some of which are found only among the Chinese of these Islands, the second marriage can be proceeded with, omitting the judicial interpolation, but on the condition that it appear summarily and extrajudicially in each case, that it is not possible to do it or that, having been made, no positive results have been obtained and to many of the Chinese, if not to all, the first part of the same may apply to them for the reasons already enumerated.”

As to the application of the foregoing Bull to the Chinese in the Philippine Islands, the same Father Gainza explains the text and the practice in the following words, at page 94 of his work above quoted:

“As to its context, although the Holy Pontiff bases it on the slaves of Angola, Ethiopia and Brazil, he also adds ‘other nations of the Indies’ and in its dispositive part he expressly states ‘In order to secure dispensation to all and each one of the faithful of Jesus Christ living in certain countries?’”

Thus is it shown that, not only by the civil law, but as well by the cannon law, Sy Quia did not need to call himself single to carry into effect his desire to marry Petronila Encarnacion. Can anybody say that he lied merely for the sake of lying?

The plaintiffs have not impeached the record of the proceedings wherein Sy Quia was formally declared single, according to law, nor have they impeached any of the rest of defendants' evidence of that fact.

In view of the foregoing, we respectfully submit that we have completely negated plaintiffs' affirmative evidence tending to establish the alleged marriage in China, and that plaintiffs have in no wise shaken the presumption of law, fortified by our overwhelming affirmative evidence, that Sy Quia was single at the time of his marriage to his Filipino wife.

Yap Puan Niu's Visit to Manila.

In an effort to prove the fact that Sy Quia was married to Yap Puan Niu, plaintiffs, through their witnesses, have shown that Yap Puan Niu came to Manila several times, and have attempted to prove that while she was there Sy Quia called on her several times. There is no satisfactory evidence in the record that Sy Quia ever did in fact visit Yap Puan Niu while she was in Manila. It has been proved that Yap Puan Niu did not stop at Sy Quia's house, but at Sy Ty's. None of the witnesses who testified that the visits of Sy Quia took place, have given a satisfactory explanation of how they knew it, when we bear in mind the Chinese custom that ordinarily the women are not visited by the men and that therefore these men could not have seen Sy Quia visiting Yap Puan Niu. Against all this testimony of occasional visitors, who did not live in the house where Yap Puan Niu stayed in Manila, defendants opposed the testimony of Ana Quang Su, the wife of Sy Ty, Sy Quia's brother (Rec., 530-555. She testified that she lived in the same house where Yap Puan Niu lived during her stay in Manila; was constantly with Yap Puan Niu while she stayed in Sy Ty's house; and never left the house during the whole time that Yap Puan Niu was there; and she distinctly says

that Sy Quia did not visit Yap Puan Niu at all. And her testimony remains unshaken.

Sy Quia's brother, Sy Hien, testified quite at length as a witness for the plaintiffs (Rec., 420 *et seq.*). It appears from his testimony that he was in Manila during the whole time that plaintiffs claim Yap Puan Niu was in Manila. Yet he does not remember her being there (Rec., 431), in spite of the fact that he lived in the same house.

Did Sy Quia Recognize Yap Puan Niu as His Wife?

There is absolutely no documentary evidence in this case of any sort that Sy Quia ever in any way recognized Yap Puan Niu as his wife, or any of the plaintiffs as his grandchildren. Several of the plaintiffs' witnesses have testified orally, with a view of proving that Sy Quia sent letters and money from Manila at different times to his alleged Chinese family in China. But notwithstanding the oral evidence tending to establish the existence of written evidence to the same effect, no written evidence was produced that Sy Quia ever recognized Yap Puan Niu or any of the plaintiffs as they claim. On the other hand, Ana Quang Su, more than any one else, had opportunity to know who supported Yap Puan Niu, Sy Yoc Ling, and Sy Yoc Chai. If Sy Quia ever gave any money to Sy Ty for the support of Yap Puan Niu, Sy Yoc Ling and Sy Yoc Chai, certainly this witness would have known it, and there would have been written evidence showing it. The more so when the laws of the Philippine Islands then in force required a merchant to enter all transactions in his books. Sy Hien testifies that Sy Quia wrote him letters referring to Yap Puan Niu, Sy Bi Bo and Sy Bi Git, as well as to Sy Yoc Ling and Sy Yoc Chai. Not a single one of these letters has been presented, in spite of the fact that they were—theoretically—in existence at the time the trial took place. Their non-presentation has not been explained nor accounted for. It

is no excuse to say that they were in China, because plaintiffs took depositions of their witnesses in China and such letters could have been presented at that time.

Who are the Plaintiffs in This Case?

As we read the title of this action, as it stands in this court, it would seem that the plaintiffs are Sy Yoc Ling, Sy Yoc Chai, Sy Hui Niu and C. W. O'Brien as guardian for Sien Han. If we turn to the testimony given by the Chinese witnesses in China and in Manila on behalf of the plaintiffs, we will find that Sy Hui Niu died about the month of February or March, 1906. Nevertheless, her name is still among the plaintiffs in this case, and as coplaintiff, we have C. W. O'Brien as guardian for Sien Han, who, the plaintiffs claim, is the heir of Sy Hui Niu. So that the dead mother and her supposed surviving infant son and heir are joined as co-plaintiffs in this action. Again, there is no evidence in this record showing affirmatively that Sien Han is in fact the son of Sy Hui Niu. All the witnesses who have testified as to this infant Sien Han being a son of the late deceased Sy Hui Niu testify only from hearsay. Sien Han's own father has not appeared to give the least information about his son, and yet it has been proven (Rec., 296) that Sien Han's father was in Manila and therefore could have been called to testify by the plaintiffs.

As regards plaintiff Sy Yoc Ling, the supposed son of Sy Bi Git, the tablets, and the testimony of the witness Sy Boan (*ante*, pp. 53, 56) raise a very reasonable doubt as to whether the Yoc Ling appearing in the questionable tablet No. 1 (the characters of which correspond to the characters that this plaintiff Yoc Ling claims to be the proper way of representing his name), and the Yoc Ling appearing in tablet No. 3 (the only tablet which appears without any formal irregularity), are one and the same person.

The Adoption of Sy Yoc Chai.

As regards the plaintiff Sy Yoc Chai, has he proved that he is in fact the adopted son of Sy Bi Bo? Has any one of the witnesses for the plaintiffs shown that Sy Yoc Chai was adopted in accordance with the laws of China in reference to adoption? The only thing that has been shown in evidence regarding the adoption is through the testimony of Li Ung Bing (Rec., 116). He tells us that the laws of adoption are written and (Rec., 123) gives a citation of those laws; but they have not been introduced in evidence, and, therefore, without positive proof that the adoption of Sy Yoc Chai did, in fact, occur, the right which he claims to the inheritance must be governed by the Civil Code in force in the Philippine Islands, inasmuch as the supposed adoption of Sy Yoc Chai took place before the present Code of Civil Procedure of the Philippine Islands went into effect.

Section 177 of the Civil Code reads as follows:

"The adopter acquires no right to inherit from the adopted. Neither does the adopted acquire any right to inherit from the adopter, unless by will, excepting when the adopter in the deed of adoption has obliged himself to institute him as an heir. This obligation shall produce no effect when the adopted dies before the adopter. The adopted retains all the rights belonging to him in his original (natural) family excepting those referring to the parental power."

We think the foregoing sustains the finding of the Supreme Court in this regard set forth at page 667 of the record.

The Nine Silk Suits.

Sy en does not remember anything about dressing the eldest child of Gregorio Sy Quia in the nine suits at the funeral of Vicente Romero Sy Quia, notwithstanding the

fact that he was the one who directed that ceremony (Rec., 558). Yet we have the testimony of Macario Favila (Rec., 522-4), corroborated by that of Pedro Antonio Sy Quia (Rec., 550) and by Sy Yoc Chai (Rec., 495-6), whose uncontradicted account of these important ceremonies describes acts of this witness (Sy Hien), which impeach the testimony not only of the witness Sy Hien, but also of all the other witnesses for plaintiffs. If Sy Yoc Chai were the eldest child of Sy Quia's first-born child, it was he, and not Tomas Romero Sy Quia, who should have worn the nine silk suits. Yet, as a matter of fact, they had sent to school for Tomas Romero Sy Quia and got him and brought him to the house to wear the nine silk suits. The act of Sy Hien at the funeral ceremony, before this litigation was ever thought of, clearly contradicts plaintiffs' witnesses as to the relationship of Sy Quia to Sy Yoc Ling, Sy Yoc Chai, Sy Bi Bo, and Sy Bi Git. If the latter two had been the children of Sy Quia, and Sy Yoc Chai the eldest grandson, certainly Sy Hien would have ordered Sy Yoc Chai to wear the nine suits; but as he was not the son of Sy Bi Bo and grandson of Sy Quia, Sy Hien, intending to bestow the rights of the eldest child on the person to whom the same belonged, that is to say, on Gregorio Sy Quia, the eldest child of Vicente Romero Sy Quia, bestowed them, and in his absence, on Gregorio's eldest child, Tomas Romero Sy Quia. It was a Chinese ceremony; the defendants knew nothing about it and did not know of its importance and significance, and Sy Hien could very easily have performed it on Sy Yoc Chai or Sy Yoc Ling without any fear of scandalizing the wife and the children of Sy Quia.

Sy Quia Never Did Acknowledge Any Relationship between Himself and the Plaintiffs.

Against the testimony of Sy Hien, who intimated that Sy Quia had several times furnished money for the education of Sy Yoc Chai and Sy Yoc Ling, and had generally

recognized them as his grandchildren, we have that of Pedro Sy Quia, who tells us (Rec., 541-542) that his father never helped Sy Yoc Chai or Sy Yoc Ling in any way, nor did he ever send any money to China, and that he would have known it if such had been the case, first, because the money was kept in the house; and, second, because he acted as his father's and mother's cashier. If Sy Quia had given any money to Sy Ty for the support, maintenance, and education of Sy Yoc Ling and Sy Yoc Chai, this fact would have appeared necessarily in Sy Ty's book, because Sy Ty was a merchant, and, as we have already suggested before, as such he was obliged by law to keep an account of all his business, private as well as commercial; and that this is so is shown by the very book of Sy Ty which plaintiffs tried to introduce in evidence and in which appeared an entry of the loan made by Petronila Encarnacion to Sy Yoc Ling. This was as much of a private transaction as the others were, and yet it appeared in Sy Ty's books. If one appeared, why did not the others appear too?

When Sy Yoc Chai was put on the stand to testify as to the meeting he had with his alleged grandfather, he tells what conversation took place (Rec., 478):

"Hello, you have come"; and I said: "Yes"; then he said: "How did your grandmother die?" and I said she had been sick and that there was no remedy and there was nothing to do, and she died."

Does that conversation show that Sy Quia acknowledged Sy Yoc Chai's relationship to him as his grandson? What we have just quoted is the only definite statement put into the record as coming from Sy Quia's lips. *There is not a scrap of paper, not a receipt, not one written line indicating in the least that Sy Quia ever recognized or acknowledged plaintiffs as his grandchildren, in spite of the fact that Sy Hien, his brother (Rec., 427), said that he had three or four boxes full of papers, which may contain commercial documents or family documents of Sy Quia.*

although he is unable to state so definitely. Is it not strange that the plaintiffs did not ask this witness to look over these papers and documents and bring them in so as to have satisfactory evidence that could support all this testimony as to the acts of a man who cannot lift his head from the grave and contradict them and every one of their statements?

Criticisms of Counsel on the Court Below.

To show how unjustifiable is the long line of severe criticisms upon the Philippine Supreme Court in the brief of our opponents, it will suffice to point out two samples illustrative of the method and merit of their attack. Though confident that the opinion of the court below will take care of itself when it receives the careful scrutiny which this court is sure to give it, we deem it our duty not to entirely overlook the ineffectual assaults of counsel upon it.

First as to the criticism of the reference in the opinion of the appellate court below to Lim Chio's testimony. The following portion of that testimony (Rec., 190), we submit, fully justifies the court's comment upon it:

"Did Sy Bi Bo and *his wife* have any children?

"Yes, two, one boy and one girl.

"What was the name of the boy?

"The name of the boy was Sy Yoc Chai."

Next comes the attack on the statement made by the court that Yap Si Tan testified that Yap Puan Niu had a natural child. The record fully sustains that statement of the court. The witness Yap Si Tan says that Sy Bi Bo had two children, one girl and one boy, and that the boy's name is Sy Yoc Chai (Rec., 203), and she also tells us (Rec., 205) that Sy Yoc Chai was born two or three years after Sy Bi Bo's marriage. In answer to a decidedly leading question made to the witness by the attorney for the plaintiffs, the memory of the witness is immediately re-

freshed and she tells us (Rec., 205) that Sy Yoc Chai is an adopted son. But, alas! the witness' memory is so much refreshed that she voluntarily tells us how, when and by whom Sy Yoc Chai was adopted. She proceeds to tell that Yap Puan Niu (Sy Quia's wife) had a natural son, and that when that son died Sy Yoc Chai was adopted. That Sy Yoc Chai is the son of Sy Bi Bo and the grandson of Yap Puan Niu. Plaintiffs might allege that it was a lapse of the witness to give the name of Yap Puan Niu in this connection. But this cannot be so, because twice this witness tells us (Rec., 211) that it was Yap Puan Niu who adopted Sy Yoc Chai:

"And you said that when Yap Puan Niu lost her natural child, she adopted Sy Yoc Chai?"

"Yes.

"Who was that child of Yap Puan Niu that died?"

"I don't remember. It is a long time ago.

"Is it not a fact that you have never known Sy Yoc Chai?"

"Yes, I have. I saw him when Yap Puan Niu took him with her on visits to her mother's home."

IV.

Even if the Chinese Marriage Was Proven, Plaintiffs Cannot Recover Any Part of This Estate Under the Law.

The exposition of this branch of this case which appears in the decision of Mr. Justice Torres, who delivered the opinion of the appellate court below, is so full, complete and concise that we submit the following extracts from it as conclusive on the points (see Rec., 656-658):

"Even assuming that the second marriage was void which was contracted by Sy Quia at Vigan while a former marriage alleged to have been performed at Amoy, China, was still in full force and effect, and upon which the plaintiffs in this case base their con-

tention, the second marriage, however, produced civil effects under the laws here in force in 1853, the time when it was performed. These laws are as follows:

"Law 3, title 3, Partida 4, provides in part as follows: Further, if people marry advisably [advisedly—*sic*], knowing that such impediment existed, and that for this reason they should not have married, the children which may be born will not be legitimate; but if only one of the contracting parties, and not both, was cognizant of the existence of such impediment, the children will be legitimate, for the ignorance of one of the contracting parties excuses them, and no one can say that they are not legitimate children.'

"Law 1, title 13, Partida 4, provides in part as follows: And even if it should happen that between those who are married manifestly in *facie ecclesia* such impediment exists which would require that the marriage be set aside, the children which may be born to them before the contracting parties knew that the impediment existed, will be legitimate. And this would also be the case if neither of the contracting parties knew that the impediment existed, as well as if only one of them had knowledge thereof, for the ignorance on the part of one of them would make the children legitimate. But if, after knowing with certainty that the impediment existed between them, they should have children, any that should be born subsequent thereto will not be legitimate. But if, while such impediment exists without the knowledge of both parties or either of them, they should be accused before the judges of the Holy Church, and before the impediment is duly established and final judgment entered, children be born to them, such children as may be born while the doubt exists, will be legitimate.'

"The Civil Code has merely reproduced with certain modifications the provisions of the old legislation in force in 1853 as to the civil effects of a void marriage where both parties married in good faith, as well as where only one of them acted in good faith, for whether one or both married in good faith, the marriage will produce civil effects only in favor of the

innocent spouse, and of the children born of this void marriage.

"If in all the acts of life good faith is to be presumed unless the contrary is proven, it cannot be denied that Petronila Encarnacion acted in good faith when she married Vicente Romero Si Quia in 1853, since there is no evidence in the record to the effect that she knew before or after her marriage that the said Vicente Romero Si Quia was married in China to another woman.

"The marriage contracted by a Christian Chinese at the time when Sy Quia was married in the Philippines, was preceded by such formalities, and so many requisites had first to be complied with, that it was difficult, not to say impossible, that in the natural and ordinary course of things the marriage could be performed if there was any impediment at all thereto; and in the case of Sy Quia, not only for many years was he considered in the city of Vigan by the community at large as a bachelor, his name appearing as such in the municipal census, but it must be fairly assumed that when he instituted the proceedings before the civil authorities, and ecclesiastical proceedings in the ecclesiastical court of Vigan, in order to secure permission and authority to marry in accordance with the various decrees then in force, among them the decree of the 20th of December, 1849, he must have positively said then that he was a bachelor, and this fact must have appeared from the summary investigation conducted by the ecclesiastical authorities of Vigan for the purpose of ascertaining whether or not he was a bachelor and free to marry, and when at last the parish priest of Vigan was authorized to proceed with the marriage ceremony, there is little reason for doubt that Petronila Encarnacion, as well as her family, relying upon the result of both proceedings, and upon the license or authority granted by the government, and the authority given by the vicar general in the name of the bishop, for the performance of the marriage, they consented thereto in the best of good faith, particularly Petronila Encarnacion, to the latter's union to Vicente Romero Sy Quia in lawful wedlock.

"If, on the contrary, it were true that Sy Quia had married in China many years before, there is no doubt that he acted in bad faith by deceiving his wife, Petronila Encarnacion, as well as the civil and ecclesiastical authorities of this country, perjuring himself. And upon the assumption that the marriage with Petronila Encarnacion was void by reason of the existence of a prior undissolved marriage, the second marriage, nevertheless, produced its civil effects in favor of the deceived spouse, and of the children born to them, who, notwithstanding the nullity of the second marriage, are in the eyes of the law legitimate, as though they had been born of parents lawfully married.

"Therefore, assuming that Vicente Romero Sy Quia acted in bad faith by concealing the fact of his first marriage at the investigation made by the authorities for the purpose of determining whether or not he was a bachelor and free to marry, one of the civil effects produced by the marriage thus rendered void was that Sy Quia thereby absolutely forfeited all his rights and interest to one-half of the conjugal property appearing in the instrument of partition, Exhibit A. F., and by operation of law all the property which would otherwise have belonged to him, became the property of his wife, Petronila Encarnacion, in accordance with the provisions of the Civil Code applicable to the case in conformity with rule 3 of the transitory provisions.

"Law 16, title 17, Partida 7, with reference to this subject, provides:

"Notorious wickedness is committed by men who knowingly marry twice while their first wife is living, and the same may be said of women who marry twice knowing that their first husband is still alive. *Because such marriages give offense to God, and bring about great damage and dishonor to those who are deceived, and they should be careful to marry well and properly, as directed by the Holy Church, for they otherwise would be married to persons with whom they would later live in sin, and while they endeavor to be happy in their marriage, and have children, the first wife or first husband appears when*

least expected, and disrupts the marriage, and on account of this rupture many women are dishonored and ruined forever, and men are disgraced in many ways. We, therefore, command that every one who should knowingly enter into such a marriage, in any of the manners specified in this law, be hence banished to some island for five years, and that he forfeit whatever he may own at the place where the marriage was performed, and that it be given to his children or his grandchildren, if he has any, and if he has no children, one-half of such property should go to the person deceived, and the other half to the King's chamber; and if both parties knew that one of them was married, and willfully married him or her, then both shall be banished, each to a separate island, and the property of either of them who may have no children should go to the King's chamber.'"

Our opponents, at page 61 of their brief, quote all of law 16, above, except the part which we have put in italics. The italicized passage omitted in their brief is essential to a clear understanding of the law in its application to this case. The italicized passage deals with the contingency of the appearance of the first wife or husband, and yet makes no provision for such first wife or husband. This is an answer to the first comment made by our opponents on the above-quoted law at page 61 of their brief.

As to the second argument made by them in regard to the provisions of this law, and in reply to their contention that "it is further perfectly plain that the term 'children or grandchildren' is not limited to the children or grandchildren of the unlawful marriage because the law provides that 'the property of either of them who may have no children shall be forfeited to the Crown,' thus implying that if he or she has children or grandchildren it shall go to them" (citing in their support the opinion of a certain Paz, page 65 of their brief), we shall only say that if the intention or the interpretation of the law were such as they claim, the Civil Code of Spain in force in the Philippine Islands (which em-

bodies the provisions of the above-quoted law) would not have provided at section 1417 as follows:

"ART. 1417. The conjugal partnership expires on the dissolution of the marriage or when it is declared void.

"The spouse who, by reason of his or her bad faith, caused the annulment, shall not receive any share of the property of the partnership."

The law of the Partida above quoted does not refer to the community property of the marriage, but to the private property of either of the spouses, because then, as well as now, the husband or the wife could have their own private property excluded from that known as *gananciales* (community property).

"* * * that the property that husband and wife have acquired, be one-half for each one of them, except that which they should prove to belong to them separately; and so we command that this be taken as the law." Law 4, tit. 4, Book X; of the Novísima Recopilación; Laws of the State, 203, 205, 206, and 207; tit. IV, Book V, of the Ordenanzas Reales de Castilla, and laws 14, 15, 16, 77, and 78 of Toro.

"All the property of the marriage shall be considered as community property, until it is proven that it belongs exclusively to the husband or to the wife." Art. 1407 of the Civil Code.

We submit, therefore, that the quotation from the author Paz (61st consulta, class 9) made at page 65 of appellant's brief does not apply. We confess that we have looked in vain for Paz's work and only have seen it quoted in the case of *Patton vs. Philadelphia*, 1 La. An., 98, from which plaintiffs quote. Paz's consulta might apply to Louisiana, because in that State law 16, title 17, of the 7th Partida was not in force,* and plaintiffs have not shown that Paz's consulta refers to this law.

* (See *Louisiana* "Las Siete Partidas" (Moreau & Carleton, 1820), vol. 2, p. 1223.)

Covarubias, Antonio, Gomez, Molina and the other authors quoted by Paz were only a few of the many commissioners appointed by Philip II to make comments on the canon law with the view of making a new compilation of laws based on their opinions. This compilation is known as the *Nueva Recopilación*, and no law appears therein to such effect. The paragraph of the 61st consulta cited by plaintiffs is an answer to a question, but they do not state what question was propounded to Paz when he wrote his answer. On the other hand, can that consulta apply to the 7th Partida as above quoted when we are told expressly that if the party marrying in bad faith has no children, "let half be for the one who was deceived and the other half for the chamber of the King," and make no provision for the "first wife who appears"?

V.

Conclusion.

In conclusion we submit that:

(1.) This case is an action at law, and therefore this court will not entertain the appeal nor retry the findings of fact.

(2.) The writ of error does not assign any errors of law, but merely seeks to accomplish what only appeal, well taken, can accomplish.

(3.) The judgment of the Supreme Court of the Philippine Islands was right, both on the law and the facts, and should be affirmed.

Respectfully submitted,

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